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ABSTRACT

This handbook contains summaries, discussions, and the texts of some of the major federal legislation that guarantees students protection from sex discrimination in the areas of education and employment. Explained first are the following employment laws: Title VII of the Civil Rights Act of 1962; Executive Order 11246, as amended by Executive Order 11375; and the Equal Pay Act, as amended by the Education Amendments of 1972. Title IX of the Education Amendments of 1972 and Title II of the Education Amendments of 1976 are also examined. Following a definition of sexual harassment, an explanation is provided of current legal issues surrounding it. Those constitutional rights most relevant to students are outlined. Described next are procedures for resolving both informal and formal grievances. A brief glossary of major terms pertaining to sexual discrimination is provided. Included in an appendix are the complete texts of all the regulations and laws referred to throughout the handbook. (Related handbooks of strategies for facilitating a peer support group for vocational students in nontraditional programs and activities for use by such support groups are available separately--see note.) (MN)

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It's Not Funny/It's Illegal

A HANDBOOK OF LAWS GUARANTEEING EQUAL EDUCATION AND EMPLOYMENT OPPORTUNITIES.

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CE 030 421

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CREDITS

IT'S NOT FUNNY/IT'S ILLEGAL

A HANDBOOK OF LAWS GUARANTEEING EQUAL EDUCATION AND EMPLOYMENT OPPORTUNITIES.

Book #3 of a Series by Project Scope (Support for Co-educational Occupational Programs in Education).

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ACKNOWLEDGEMENTS

I consider it a unique opportunity and an incredible learning experience to have directed Project SCOPE, and I am both proud of and delighted by its wonderful success. I also felt it to be a great honor for Shawsheen to have hosted the grant, thus showing me their trust and support in supportive services for non-traditional students. Many people have donated their time and offered their talents for the project, and I am forever indebted to them for their hard work and guidance, particularly those which follow:

John McDermott, SCOPE coordinator, for his constant encouragement, ongoing patience and infinite wisdom; Joan Capriole, project facilitator and author, for holding my hand and patting me on the back when I needed it most; Elizabeth Keroack, editor and contributing author, for her terrific ideas and superior writing abilities; Jim Munn, our photographer, for his outstanding photographs and other numerous contributions; Mary Terrizzi, our illustrator, for her enchanting artistry; Kathy Murray, our secretary, for her endurance through all those retypings; the many support group students for allowing me to interview, photograph, quote, question, and do all this in a furious attempt to bring out their unique qualities and charming individuality; Maureen Lynch, a fine and special friend, for giving me "the spark"; the bureau of student services at the Massachusetts Department of Education for their cooperation and assistance; Kathleen Boundy of the Harvard Center for Law and Education, for her legal assistance; Mr. James and his Graphic Arts Department at Shawsheen for turning my box full of unfinished layouts, pencilled-in notes, last-minute changes and other various uncoded illustrations and photographs, all into 4 beautiful books (nothing short of simple magic); and all the wonderful people at Shawsheen for their cooperation, trust, and ongoing support.

Lastly I want to thank Paul, Bob, Don, Charlie, Bill, Luigi, Matthew, Frank, David, John, Mike, Dwayne, Shawn, Dave, Domingo, Jim, Chip, Tom and particularly Susan and Brion. The special friendships I have found in these people, the numerous experiences we have shared, and the four years we've all spent together growing and learning have changed my life and how I see myself. Without them, the development of this project and my strong desire to write would be non-existent. And to all of them I dedicate, with much gratitude and love, the many hours of hard work I have placed into Project SCOPE.

Susan Riley,
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Editor's Note

When I first learned of the existence of the SCOPE grant, I thought that working on the project would be an interesting summer interlude. Little did I realize that what I was being asked to edit were not merely four ten-page booklets of simplistic student writing, but four lengthy and finely organized booklets which detail the complex phenomenon of student support services!

Like many teachers who have sometimes despaired of student initiative and ability, I was skeptical about the success of a grant directed and staffed primarily by students. I need not have been. Susan Riley, *Project Director,* and the rest of her staff were as hard-working and able a group as any other professional group I have had the good fortune to work with. For all of us, the project became a labor of love, and the end products indeed reflect this care and commitment.

Perhaps the best measure of the success of the grant lies in the amount of personal growth all staff members experienced while working on SCOPE. While I did gain a great deal of knowledge about the editing function and the competency of student staffers, most importantly, I learned to appreciate the difficulty of being a non-traditional student in a sometimes indifferent world. However, despite the difficulty, I envy today's students their career opportunities and non-traditional choices, and I hope that the SCOPE booklets make the path "less traveled by" one of personal and professional success for all.

Elizabeth Keroack
Project Editor

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Project SCOPE

Support for Coeducational Occupational Programs in Education

WHAT An ESEA Title II P.L. 94-482 funded project administered through the Division of Occupational Education, Massachusetts Department of Education (Project No. 80-871-000-096-7).

WHY To produce a series of four booklets designed to provide information on the concept of peer support groups for vocational students in non-traditional programs.

PRODUCTS Four Booklets:

No. 1. *Together We Can*; strategies for the facilitation of a peer support group.

No. 2. *A Fair Shot/An Equal Chance;* a handbook of activities for a peer support group.

No. 3. *It's Not Funny/It's Illegal;* a summary of laws guaranteeing equal education and employment opportunities.

No. 4. *It's Up To You/Portraits;* character sketches of students in non-traditional vocational programs.

WHERE Shawsheen Valley Regional Vocational Technical High School, 100 Cook Street, Billerica, Massachusetts 01866

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WHEN April-December, 1980
Follow-up efforts are continuing.

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Made possible by a grant from the Division of Occupational Education, through Shawsheen Valley Regional Vocational High School, Billerica, Massachusetts, 01866, Benjamin Wolk, Superintendent-Director. Grant #80-871-000-096-7, 1980.

Introduction

Included in this booklet is only a small bit of the existing federal legislation which prohibits discrimination on the basis of sex. The primary intention of *It's Not Funny/It's Illegal* is to *familiarize* students with those general laws which guarantee them protection under the law. The majority of the laws covered in this booklet are federal; for that reason, it is a good idea to check your state laws to determine whether or not the state has passed legislation prohibiting sex discrimination in education and/or employment. To do so, contact:

- your regional Congressperson.
- the sex equity coordinator at your State Department of Education.
- your state Civil Rights Office.

This booklet is divided into seven sections including Employment Laws, Education Laws, Sexual Harassment, Student Rights, Grievance and Grievance Procedures, Glossary, Appendix, and Bibliography.

Employment Laws

Title VII, The Equal Pay Act, and Executive Order 11246 are employment laws which apply only in instances when an employee or group of employees has been discriminated against, and the employer is assumed to be at fault. Employment laws also directly affect any vocational education student who holds a job or cooperative work experience while still attending school.

Education Laws

Title IX and the Vocational Education Amendments are education laws which apply to education institutions and so protect the student from sex discrimination within them.

Sexual Harassment

This section defines the behavior of sexual harassment and explains the current legal issues surrounding it.

Student Rights

Students rights (or the Constitutional rights most relevant to students) briefly explains those rights guaranteed to them by the U.S. Constitution.

Grievance and Grievance Procedures

This section explains what a grievance is and how to go about filing one should the necessity arise.

Glossary

Italicized words which appear in each section of the booklet are listed alphabetically and defined in the Glossary.

Appendix

The Appendix consists of the complete publication of all the regulations and laws which are referred to consistently throughout the booklet.

Note: There are laws that cover both the areas of employment and education; for example, Title IX protects both the student and employee from discrimination based on sex in any public education institution.

Title VII of the Civil Rights Act of 1962

Title VII *prohibits discrimination* on the basis of race, color, religion, sex, or national origin by (1) private employees of 15 or more persons, (2) public and private schools, (3) state and local governments, (4) public and private *employment agencies*, (5) labor unions with 15 or more members, and (6) joint labor/management committees for apprenticeship and training. Religious institutions, however, may be *exempt* from the *provisions* of Title VII where the employment of persons of a particular religion proves to be a necessity.

Areas Covered:

Title VII prohibits discrimination in the areas of hiring, promotion, salary, fringe benefits, training, and in all other terms and conditions of employment.

State and local governments, private *employers,* and labor unions must provide all persons with an equal opportunity to (1) participate in training and apprenticeship programs, (2) be hired and promoted into all types of jobs, and (3) receive all available benefits of those jobs.

Some examples of *sex discrimination* which are forbidden by Title VII include:

- maintenance of sex-segregated classified advertising ("help wanted — male").
- establishment of different retirement ages for men and women (62 for women, 65 for men).
- refusal to treat pregnancy as a temporary disability.

Enforcement:

Enforcement of Title VII is generally the responsibility of the Equal Employment Opportunity Commission (EEOC). The EEOC was established to investigate, resolve, and, if necessary, *litigate* complaints of discrimination. EEOC also encourages and helps employers to establish voluntary *compliance* programs. The *guidelines* issued by EEOC (see Appendix) are the standards used to determine whether or not there is compliance with Title VII by the covered agencies.

Complaint:

A complaint may be filed with the EEOC by any person (or his/her representative) who believes himself/herself or any group of persons to be the subject of discrimination prohibited by Title VII.

The complaint must be filed within 180 days of the *alleged discriminatory* act. EEOC only investigates when a charge has been filed. EEOC must then notify the persons or organizations against whom the charge has been made within 10 days of the filing. Following completion

of an investigation, if EEOC has found reasonable cause to believe discrimination exists, letters of findings are sent to the *complainant* and employer, and the commission informally attempts to bring the party responsible for the discriminatory practice into compliance with Title VII. If attempts at voluntary settlement fail, EEOC or the U.S. Attorney General may also *file suit* after obtaining a "right to sue" letter from EEOC.

Courts may (1) prohibit the employer, labor union, or other covered organization from engaging in unlawful acts, (2) order appropriate remedial action, (3) reinstate employees, or (4) award back pay and/or attorneys' and court fees.

Covered agencies and institutions are prohibited from discharging or discriminating against any employee or applicant for employment because he/she has (1) made or threatened to make a complaint, (2) assisted with an investigation, or (3) taken any action that indicates opposition to discrimination.

For further information on Title VII, see Appendix or contact:

Equal Employment Opportunity Commission
2401 E. Street, N.W.
Washington, DC 20506

Executive Order 11246, as amended by Executive Order 11375

Executive Order 11246, as amended by *Executive Order* 11375, prohibits discrimination on the basis of race, color, religion, sex, or national origin by most federal government contractors and by contractors and subcontractors in federally assisted construction. Although labor unions are not directly subject to the requirements of these orders, their collective bargaining agreements, membership, and other related practices may determine if the federal contractors they deal with are practicing *discrimination* in employment. Therefore, unions are important parties in *compliance* with these orders.

Areas Covered:

Executive Orders 11246 and 11375 prohibit discrimination in the areas of hiring, promotion, salary, fringe benefits, training, and in all other conditions of employment. Contractors are *prohibited* from

discriminating in all aspects of their employment practices. They are also required to take *affirmative action* wherever necessary in order to remedy the effects of discrimination. Other specific obligations under these orders include the following:

- Contractors must post notices announcing their non-discriminatory responsibilities in places conspicuous to employees, applicants, and representatives of each labor union with which they deal.
- In all advertisements for employment, contractors must state that there will be no discrimination in the selection for any position.
- Contractors are required to adjust tests and other screening procedures, and make all other changes necessary to assure that such instruments are non-discriminatory, as part of a written *affirmative action compliance* program.

Some examples of *sex discrimination* which are forbidden by Orders 11246 and 11375 include:

- a union's demand for sex-segregated seniority systems.
- a contractor's refusal to hire a woman for certain jobs because of weightlifting requirements.

Enforcement:

The Office of Federal Contract Compliance Programs (OFCP) of the U.S. Department of Labor is responsible for coordinating and overseeing the contract compliance process. The Office of Federal Contract Compliance Programs has issued guidelines, known as Revised Order No. 4 (see Appendix) and Sex Discrimination Guidelines (also see Appendix), that require contractors to establish and maintain affirmative action programs to eliminate and prevent discrimination.

The U.S. Department of Labor has the policy responsibility for the Executive Orders, but has placed authority for their enforcement in *education institutions* with the U.S. Department of Education. The department's Office for Civil Rights (OCR) investigates complaints and conducts periodic compliance reviews.

Complaint:

A complaint may be filed by individuals on their own behalf or by organizations authorized to act on the behalf of an individual who believes himself/herself or a specific group of persons to be subjected to discrimination prohibited by Executive Orders 11246 and 11375.

The complaint must filed within 180 days of the *alleged discriminatory* act unless the deadline for filing is extended by the OFCCP director because good cause for extension has been shown. The OFCCP may investigate the complaint or forward it to the EEOC for investigation.

Once a complaint has been filed with the agency, it is the responsibility of that agency to resolve it. Letters of findings are sent to the contractor upon completion of the investigation, and if attempts to secure voluntary compliance fail, the agency may enact proceedings to suspend or terminate the federal contract(s) and to bar future awarding of contracts.

OFCCP or the agency handling the complaint may publish the names of contractors or unions that are not in compliance. They may also recommend that

the U.S. Attorney General's Office or the EEOC *file suit* to (1) enforce the contractor's obligations under the Orders or (2) allow proceedings under Title VII to be begun.

Those contractors and institutions covered by the Orders are prohibited from discharging or discriminating against any employee or applicant for employment because he/she has (1) made a complaint, (2) assisted with an investigation, or (3) taken any action that indicates opposition to discrimination.

For further information on Executive Order 11246, as amended by Executive Order 11375, see Appendix or contact:

Wage and Hour Division
Employment Standards Division
U.S. Department of Labor
Washington, DC 20210

The Equal Pay Act, as amended by the Education Amendments of 1972

The Equal Pay Act amended the Fair Labor Standards Act (which established a federal minimum wage, overtime pay, and child labor laws) to include a *prohibition* against pay differences based on sex. All businesses that must pay employees minimum wage are prohibited from discriminating on the basis of sex in determining wages for workers. The Education Amendments of 1972 extended The Equal Pay Act to include previously uncovered academic personnel.

Areas Covered:

The Equal Pay Act prohibits *discrimination* against employees on the basis of sex in the payment of wages and fringe benefits.

Covered employers must pay men and women the same wages if they work at the same business location, under similar working conditions, doing work which requires equal or substantially similar skill, effort, or responsibility. Difference in pay must be based on merit, seniority, or a method which measures earnings by quantity or quality of production; the method may not be based on the sex of the worker.

Some examples of *sex discrimination* which are forbidden by The Equal Pay Act:

- establishment of different pay scales for male and female clerical workers.

- refusal to pay women overtime while permitting men unlimited paid overtime.

Enforcement:

A complaint may be filed with the Wage and Hour Division of the U.S. Department of Labor by any person who believes himself/herself or any specific group to be the subject of wage discrimination by sex. A complaint may also be filed by any individual who believes that violation of this act exists in a particular place of business.

Complaint:

The complaint may be written or oral (telephoned in or told in person), and may be made anonymously. There is no official time limit for filing a complaint; however, recovery of back pay as a result of a complaint is limited to two years for a non-willful violation, and three years for a willful violation.

The Wage and Hour Division investigates complaints and conducts periodic *compliance* reviews without reported violations. Upon completion of an investigation where *alleged* discrimination has been reported, the Wage and Hour Division will formally attempt to bring the *employer* into compliance with the law.

If attempts to secure voluntary compliance fail, the Secretary of Labor may *file suit.* Individuals may file suit if the Secretary does not do so. Courts prohibit the employer from engaging in unlawful acts; the courts may order the employer in violation to pay salaries (including back pay) with interest.

For further information on The Equal Pay Act, as amended by the Education Amendments of 1972, contact:

Wage and Hour Division
Employment Standards Division
U.S. Department of Labor
Washington, DC 20210

Title IX of the Education Amendments of 1972

Most *education institutions* across the United States receive federal financial assistance. These institutions include preschool programs, elementary and secondary school systems, four-year colleges and universities, vocational and technical schools, two-year community and junior colleges, and graduate and professional schools. Title IX of the Education Amendments of 1972 and the U.S. Department of Education's Title IX regulations (see

Appendix) prohibit education institutions which receive federal funds from discrimination on the basis of sex.

Areas Covered:

This *prohibition* covers educational programs, employment practices, health benefits, housing policy, athletic participation, school admissions, financial aid, and all other programs and services of an education institution (with the exception of fraternities and sororities). Military schools and schools operated by religious organizations are exempt from Title IX.

Vocational, professional, graduate, and public undergraduate schools may not discriminate on the basis of sex in admissions, but private undergraduate schools, schools that have traditionally admitted individuals of one sex only, and public and private pre-schools and elementary and secondary schools (except where such schools are vocational) are exempt from the *provisions* with regard to admissions only.

Some examples of *sex discrimination* which are forbidden by Title IX of the Education Amendments of 1972 include:

- different treatment in recruitment, admissions, or financial aid.
- different course offerings, prerequisites, or requirements.
- different treatment in housing, facilities, counseling, health and insurance benefits, and other services.
- exclusion from or unequal opportunities in athletic programs or extracurricular activities.
- significantly different assistance to individuals or organizations, such as school clubs or employers.

Education institutions are required to comply with specific Title IX regulations by assuring:

- development of self-evaluations and plans for remedial action to identify and correct discriminatory practices.
- selection of a responsible employee to coordinate remedial efforts and identify and correct discriminatory practices. This person assumes the title of Title IX Coordinator.
- adoption and publication of *grievance procedures* that provide a means of resolving student and employee complaints.
- written notification of employees, participants, applicants, parents of students, unions, and other professional organizations assuring that the school does not discriminate on the basis of sex and so complies with Title IX.

In its programs and activities, an education institution must:

- provide equal opportunity in admissions, scholarship awards, and benefits and services.
- provide comparable facilities for men and women.
- provide opportunities for athletic activities that accommodate the interests and abilities of members of both sexes.
- treat student pregnancy and related conditions (such as miscar-

riage, termination and recovery from childbirth) as any other temporary disability, and include gynecological care when full health coverage is provided.

- treat job applicants and employees in a non-discriminatory manner.

Enforcement:

The U.S. Department of Education's Office for Civil Rights (OCR) enforces the regulations of Title IX. OCR investigates complaints and conducts periodic reviews in the absence of complaints.

Complaint:

A complaint must be filed within 180 days after the alleged discriminatory act has occurred. Charges may be filed by individuals or by organizations authorized to act on behalf of the individual.

OCR notifies an education institution shortly after it receives a complaint lodged against the institution. Letters of findings are sent to the institution and the *complainant* upon completion of the investigation. If discrimination is found, the OCR may require the education institution to correct its policies and procedures; it may also require *affirmative action* to overcome the effects of past discrimination.

If attempts to secure voluntary *compliance* fail, the Office for Civil Rights may institute proceedings which may result in the suspension or termination of federal financial assistance to the institution charged.

Note: Those education institutions covered by Title IX are prohibited from discharging or discriminating against any student or employee because he/she has (1) made a complaint, (2) assisted with an investigation, or (3) taken any action which indicates opposition to discrimination.

For further information on Title IX of the Education Amendments of 1972, see Appendix or contact:

Office for Civil Rights
U.S. Department of Education
Washington, DC 20201

The Vocational Education Amendments

Title II of the Education Amendments of 1976

The Vocational Education Act of 1963 was considerably changed by the Education Amendments of 1976 (Public Law 94-482). A major purpose of the revised act is to develop and carry out programs in vocational education to overcome *sex bias, sex discrimination,* and *sex stereotyping,* and to promote equal opportunity for both sexes. The *act* provides a variety of measures designed to significantly improve the vocational preparation of girls and women so that they may upgrade their status in the labor market.

The Vocational Education Act affects national, state, and local governments. At the national level, the act directs the U.S. Department of Education to conduct studies and administer grants to states and private groups for a variety of purposes. The states in turn distribute the funds to local education agencies and private groups for their use according to those methods described in detail in the act and its regulations (see Appendix).

Areas Covered:

Vocational Education Act funds are distributed to each state under several subcategories of the act and according to a population-based formula. The state then distributes federal funds to local school systems and post-secondary vocational schools on the basis of a formula it develops and on the basis of local applications for funds. The Vocational Education Amendments provide funds to be spent in several ways which (1) promote equal access to vocational education, and (2) overcome sex bias and sex role stereotyping in it. These ways include:

- Basic Grants
- Program Improvements and Support Services
- Vocational Education Personnel Training

Title II protects persons of all ages served by vocational education programs because it establishes requirements for state and local programs, requirements that ensure the implementation of federal program priorities.

Title II prohibits the expenditure of federal funds, along with matching state and local funds, except as specified in the state's five-year and annual program

plans* (as developed by the state and approved by the U.S. Commissioner of Education).

Title II requires that each state eligible for a federal grant supporting vocational education expend grant funds and those matched by state and local resources in accordance with approved five-year and annual program plans which include the following components:

- **Funds for Disadvantaged Persons** — The state must spend at least 20 percent of Title II funds for the vocational education of disadvantaged persons (other than the handicapped), including persons of limited English-speaking ability.
- **Funds Designed for Handicapped Persons** — Ten percent of the state's Title II funds must be used to provide vocational education services for handicapped persons. The state must use these funds, wherever it is possible, to enable handicapped persons to participate in regular vocational education programs.
- **Funds Designed for Post-secondary and Adult Programs** — Fifteen percent of Title II funds must be used to provide support for post-secondary and adult vocational education programs and services.
- **Actions for Overcoming Sex Bias, Sex Discrimination, and Sex Stereotyping** — Overcoming sex bias, sex discrimination, and sex stereotyping in vocational education is one of the four stated purposes of Title II. The state must adopt this purpose and consider it when developing and implementing its five-year and annual program plans. Among the specific requirements for state action are:
  - the appointment of fulltime personnel to fulfill sex equity duties specified by law.
  - the description by the state (in its five-year and annual program plans) of policies and actions which it will follow to ensure equal access by both sexes to vocational education programs.
  - incentives for eligible recipients to encourage men and women to enroll in non-traditional vocational education programs** and to encourage development of model programs for sex equity.
- **Programs for Displaced Homemaker and Other Special Groups** — The state must use Title II funds in accordance with its five-year and annual program plans to provide vocational education for:
  - homemakers who must seek employment because their marriages terminated.
  - single heads of households who lack adequate job skills.
  - women working in jobs traditionally considered to be "for females," but who wish to seek non-traditional occupations.

* Five-year and annual program plans consist of policies and actions which agencies follow to ensure equal access to vocational education programs by both sexes.

** Non-traditional vocational education programs are those programs which were once assumed to be only for persons of one particular sex.

- men working in jobs traditionally considered to be "for males," but who wish to seek non-traditional occupations.

- **State Programs Improvement and Support Services** — When contracts are awarded under state program funds, priority must be given to programs and projects designed to reduce sex bias and sex stereotyping in vocational education. Twenty percent of these Title II funds must be used to support counseling and guidance programs and services, including those designated to overcome occupational *sex stereotyping.*
- **Special Programs for Disadvantaged Persons** — Each state is allotted funds for special programs to aid disadvantaged persons in areas where school dropouts and youth employment are concentrated.
- **Consumer Homemaking Education Programs** — Funds are allotted to each state for consumer and homemaking education programs which assist students to overcome sex stereotyping. (These programs, when appropriate, also include courses in bilingual instruction.) The programs provide the following services:
  - the encouragement of males and females to prepare for the combined roles of homemaker and wage earner.
  - the development of curriculum materials which deal with (1) the increase in the percentage of women working outside the home, (2) the increase in the percentage of men assuming homemaking responsibilities, (3) the increase in the percentage of men and women changing career patterns, and (4) the increase in the amount of federal and state laws for equal opportunity in education and employment.
  - Of the Title II funds allotted to states, one-third must be distributed to economically depressed areas or areas with high unemployment rates.

Enforcement:

A designated agency in each state receives the Title II funds and gives them out to local education agencies and other eligible institutions. The state agency is responsible for ensuring that all recipients of funds within its jurisdiction comply with the law. The U.S. Commissioner of Education may suspend or terminate federal funding if a state fails to comply with Title II, provided that the state has been given reasonable notice, the opportunity for a hearing, and the results of the hearing show a failure to comply with the *provisions* of Title II.

For further information on Title II of the Education Amendments of 1976, see Appendix or contact:

Office of the Deputy Commissioner
Bureau of Occupational and Adult Education
U.S. Office of Education
Washington, DC 20202

Sexual Harassment

What is Sexual Harassment?

Sexual harassment is unwanted attention deliberately given by peers, coworkers, supervisors, customers, clients or anyone with whom the victim must work in order to fulfill job or school obligations.

The range of behaviors of sexual harassment includes:

staring
gestures
remarks made in front of others
remarks made in private
touching
propositioning
hitting
suggestions about body/clothing
pressure for sexual activity
attempted rape/rape

Sexual harassment is a particular form of sex discrimination. All sexual harassment constitutes sex discrimination, but not all sex discrimination can be considered sexual harassment. Requests for sexual favors of a woman employee from her male supervisor is sexual harassment. Paying male and female employees differently when they perform the same job duties is an example of sex discrimination.

Where/How often does Sexual Harassment occur?

Sexual harassment can occur anywhere at any time. Conducted by *Redbook,* a 1976 national survey of 9,000 employed women discovered that 9 out of 10 respondents had experienced unwanted sexual attention at work. Seventy percent of the victims said they had found the situations embarrassing and demeaning.

Current studies indicate that the majority of women will experience sexual harassment at some point in their work lives. For this reason, sexual harassment is considered to be a widespread social problem, not merely the result of a serious misunderstanding between persons.

What laws protect against Sexual Harassment?

Sexual harassment is now considered to be a form of sex discrimination, and therefore illegal under existing federal and state legislation. Title IX of the Education Amendments of 1972 prohibits sex discrimination in education, just as Title VII of the Civil Rights Act of 1964 prohibits sex discrimination in employment. Both federal laws are reinforced by similar state statutes in most states. Under these laws, education institutions are responsible for preventing sexual discrimination against their employees and students. For employees, the Equal Employment Opportunity Commission (EEOC) exists to enforce Title VII and to investigate complaints of discrimination.

The problem of sexual harassment of women students by male faculty and staff has recently gained widespread public attention, and proposed legal and ad-

ministrative remedies for the problem are now being clarified. In 1976, a number of women students filed a suit against Yale University charging sexual harassment, and claimed that Yale University was responsible under Title IX for the occurence and prevention of such harassment and for the remediation of any problems which arose. Although the case of *Alexander vs. Yale* was decided against the plaintiff, the court did state that Title IX was an appropriate vehicle for pressing complaints of sexual harassment in education, and that sexual harassment was indeed a form of sex discrimination. When women students are subjected to unwanted sexual advances from male teachers or supervisory personnel, they are in a situation where they are being singled out by sex alone. When they suffer economic or academic harm or emotional stress resulting from such advances, this harassment can create a situation where women are discriminated against and victimized.

A woman student or group of women students who have been harassed have a number of options under Title IX: civil suits; complaints through the OCR or equivalent state agencies; or complaints through the Title IX grievance procedure at their school. Civil suits and complaints with the OCR must be filed within 180 days of the incident. It is likely that Title IX sexual harassment cases will follow the pattern which has been established under Title VII. Both processes are long, potentially stressful, and in the case of civil suits, costly. Civil suits may drag on for months. Nevertheless, a civil suit has the advantage of allowing the student to recover personal damages. Filing with the OCR contains no such indication, since the OCR has authority only to cut off funding to the school, but not to compensate the individual. To date, therefore, the U.S. Department of Education has interpreted Title IX to mean that the individual does not have to exhaust administrative remedies through the OCR before filing a civil suit on the basis of Title IX.

Over the past few years, a number of Title IX suits and OCR complaints have been filed against universities by women students who have been sexually harassed by faculty members. These cases have charged that inadequate procedures exist at the university to resolve and remedy sexual harassment complaints, and that the *lack of adequate complaint procedures for sexual harassment is itself a violation of Title IX.*

In November of 1980, the EEOC issued specific guidelines on sexual harassment as a form of sex discrimination. They established a standard of strict employer liability. The evolving case law under Title VII indicates that the courts are ruling increasingly in favor of the complainant charging sexual harassment, and the settlements are getting larger.

Parts reprinted (with permission) from materials by the Alliance Against Sexual Coercion, Cambridge, MA.

For more information on sexual harassment, see *A Fair Shot/An Equal Chance,* the second booklet in the SCOPE series.

Constitutional Rights Most Relevant to Students

These student rights are very important to the successful functioning of a support group because they protect the rights of the group to assemble, advertise, and express itself (if done without violation of other laws) freely and legally.

The first amendment of the U.S. Constitution protects every student's **freedom of expression** in schools. School officials may not prevent students from expressing an idea simply because they do not like or agree with the idea. A school cannot stop students from publishing an article simply because it criticizes the administrators.

Students have the right **to symbolic expression,** which includes the wearing of badges, buttons, armbands, messages on teeshirts and the like, subject to the limitations of obscenity.

The first amendment protects the right of students **to publish and/or distribute any form of literature, subject to the limitations of obscenity.** The content of the student publication may not be censored by the school administration. Though the school may support the paper financially or otherwise, it may not use this power to control the content of the paper. Also, the staff of the paper must set fair submission standards; if it allows articles supporting particular views, space must be provided for opposing viewpoints.

Students have the right **to distribute, at school, material which they have had published off-campus.** Students can also distribute (on school grounds) written material, though they did not write it. The content of such material may not be censored. The school administration cannot require students to submit a copy of the material before distribution. However, the school can require that students submit a copy at the time of distribution.

Assembly

All students have the right **to assemble peacefully.** Unless the school can show that there is a clear and immediate probability that student action will substantially disrupt the educational process, students may not be prevented from assembling. The school cannot require students to get permission to assemble unless it has published specific rules which:

1) Define assembly (i.e., Are 13 students an assembly?).
2) Spell out the standards for whether or not an assembly will be allowed.
3) State a short, definite deadline for making the decision.
4) Spell out a quick, clear appeals process for use if assembly is forbidden.

Student Organizations

Students have the right **to form political and social organizations.** The

school may require students to register the group in order to get school funds, but if it has a registration requirement, it must register any group which does not use "incitement." It may require the names of group contacts for registration, but it may not require a membership list. Even if a group is not registered, it has basic rights of free speech, assembly, and literature distribution, subject to the limitations stated above.

Facilities

If a school allows some students to use school equipment or facilities such as public address systems, bulletin boards, or duplicating machines, it must allow all students **to use school equipment and facilities** under similar conditions. The school may place reasonable, evenly-applied limits on time, place, and expense of such use.

Grievance and Grievance Procedures

What is a grievance?

A grievance is a complaint lodged against negative policy or behavior enacted by a particular person or agency. There are two different types of grievances — informal and formal.

Informal Grievance

An immediate course of action available to any person or group of persons whose rights have been violated is for that person or group to discuss the complaint with the person or agency responsible for it. Just bringing a violation to the attention of employers, superintendents, or others in positions of authority may result in immediate resolution of the problem.

Formal Grievance

The procedure for filing a formal grievance with the agency responsible for enforcement varies with each law. For further information, see the Enforcement and Complaint categories of each regulation covered in this booklet.

General Glossary

Terms in alphabetical order:

affirmative action — a formal plan which prevents discriminatory treatment and promotes positive change.

alleged — supposed; said to be.

amendment — a change or modification by Constitutional procedure.

bias — attitudes toward/opinions about a person before there is logical reason for them.

complainant — the individual who makes a complaint.

compliance — the process of adopting a rule.

Constitutional rights — those rights which are guaranteed to all individuals by the U.S. Constitution.

discrimination — the denial of a right, job, or award because of a distinction made about a person on the grounds of race, national origin, religion, or sex, rather than on individual merit.

discriminatory — applying or favoring discrimination in treatment.

education agency or institution — generally, any program or activity which teaches or instructs individuals; these include preschool programs, elementary and secondary school systems, four-year colleges and universities, vocational and technical schools, two-year community and junior colleges, and graduate and professional schools.

employee — one who works for wages at an employment agency.

employer — a person or company that puts to work 15 or more persons (this definition according to federal regulations).

employment agency — a place where 15 or more persons work.

enforcement — the putting into effect of a law or regulation.

Executive Order — an order issued by the President of the U.S.; it is binding on the executive branch of the federal government.

exempt — to release from requirements which others are held to.

file suit — the right of a complainant to file civil action to enforce a right which has been violated or denied.

grievance — an informal or formal expression of complaint.

grievance procedure — a formal complaint process by which an individual or group may take legal action to correct a violation of rights.

guidelines — the interpretations of regulations.

litigate — to carry out legal action by judicial process.

prohibit — to forbid by authority; to prevent from doing.

provisions — precautionary measures.

rights — those powers or privileges of an individual or group which must be respected by others.

sex bias — attitudes toward/opinions about a person based on an assumption about the characteristics of his/her sex.

sex discrimination — denial of a right, job, or award because of distinctions made on the basis of a person's sex.

sex equity — equal opportunity for members of both sexes.

sex stereotyping — considering certain behaviors, abilities, and characteristics appropriate to a person based on his/her sex.

APPENDIX

Sex Discrimination Guidelines of the Equal Employment Opportunity Commission (For Title VII)

PART 1604—GUIDELINES ON DISCRIMINATION BECAUSE OF SEX

Sec.
1604.1 General principles.
1604.2 Sex as a bona fide occupational qualification.
1604.3 Separate lines of progression and seniority systems.
1604.4 Discrimination against married women.
1604.5 Job opportunities advertising.
1604.6 Employment agencies.
1604.7 Pre-employment inquiries as to sex.
1604.8 Relationship of Title VII to the Equal Pay Act.
1604.9 Fringe benefits.
1604.10 Employment policies relating to pregnancy and childbirth.

AUTHORITY: The provisions of this Part 1604 issued under sec. 713(b), 78 Stat. 265, 42 U.S.C. sec. 2000e-12.

SOURCE: 37 FR 6836, April 5, 1972, unless otherwise noted.

§ 1604.1 General principles.

(a) References to "employer" or "employers" in this Part 1604 state principles that are applicable not only to employers but also to labor organizations and to employment agencies insofar as their action or inaction may adversely affect employment opportunities.

(b) To the extent that the views expressed in prior Commission pronouncements are inconsistent with the views expressed herein, such prior views are hereby overruled.

(c) The Commission will continue to consider particular problems relating to sex discrimination on a case-by-case basis.

§ 1604.2 Sex as a bona fide occupational qualification.

(a) The Commission believes that the bona fide occupational qualification exception as to sex should be interpreted narrowly. Labels—"Men's jobs" and "Women's jobs"—tend to deny employment opportunities unnecessarily to one sex or the other.

(1) The Commission will find that the following situations do not warrant the application of the bona fide occupational qualification exception:

(i) The refusal to hire a woman because of her sex based on assumptions of the comparative employment characteristics of women in general. For example, the assumption that the turnover rate among women is higher than among men.

(ii) The refusal to hire an individual based on sterotyped characterizations of the sexes. Such steretoypes include, for example, that men are less capable of assembling intricate equipment; that women are less capable of aggressive salesmanship. The principle of nondiscrimination requires that individuals be considered on the basis of individual capacities and not on the basis of any characteristics generally attributed to the group.

(iii) The refusal to hire an individual because of the preferences of coworkers, the employer, clients or customers except as covered specifically in subparagraph (2) of this paragraph.

(2) Where it is necessary for the purpose of authenticity or genuineness, the Commission will consider sex to be a bona fide occupational qualification, e.g., an actor or actress.

(b) Effect of sex-oriented State employment legislation.

(1) Many States have enacted laws or promulgated administrative regulations with respect to the employment of females. Among these laws are those which prohibit or limit the employment of females, e.g., the employment of females in certain occupations, in jobs requiring the lifting or carrying of weights exceeding certain prescribed limits, during certain hours of the night, for more than a specified number of hours per day or per week, and for certain periods of time before and after childbirth. The Commission has found that such laws and regulations do not take into account the capacities, preferences, and abilities of individual females and, therefore, discriminate on the basis of sex. The Commission has concluded that such laws and regulations conflict with and are superseded by title VII of the Civil Rights Act of 1964. Accordingly, such laws will not be considered a defense to an otherwise established unlawful employment practice or as a basis for the application of the bona fide occupational qualification exception.

(2) The Commission has concluded that State laws and regulations which discriminate on the basis of sex with regard to the employment of minors are in conflict with and are superseded by title VII to the extent that such laws are more restrictive for one sex. Accordingly, restrictions on the employment of minors of one sex over and above those imposed on minors of the other sex will not be considered a defense to an otherwise established unlawful employment practice or as a basis for the application of the bona fide occupational qualification exception.

(3) A number of States require that minimum wage and premium pay for overtime be provided for female employees. An employer will be deemed to have engaged in an unlawful employment practice if:

(i) It refuses to hire or otherwise adversely affects the employment opportunities of female applicants or employees in order to avoid the payment of minimum wages or overtime pay required by State law; or

(ii) It does not provide the same benefits for male employees.

(4) As to other kinds of sex-oriented State employment laws, such as those requiring special rest and meal periods or physical facilities for women, provision of these benefits to one sex only will be a violation of title VII. An employer will be deemed to have engaged in an unlawful employment practice if:

(i) It refuses to hire or otherwise adversely affects the employment opportunities of female applicants or employees in order to avoid the provision of such benefits; or

(ii) It does not provide the same benefits for male employees. If the employer can prove that business necessity precludes providing these benefits to both men and women, then the State law is in conflict with and superseded by title VII as to this employer. In this situation, the employer shall not provide such benefits to members of either sex.

(5) Some States require that separate restrooms be provided for employees of each sex. An employer will be deemed to have engaged in an unlawful employment practice if it refuses to hire or otherwise adversely affects the employment opportunities of applicants or employees in order to avoid the provision of such restrooms for persons of that sex.

§ 1604.3 Separate lines of progression and seniority systems.

(a) It is an unlawful employment practice to classify a job as "male" or "female" or to maintain separate lines of progression or separate seniority lists based on sex where this would adversely affect any employee unless sex is a bona fide occupational qualification for that job. Accordingly, employment practices are unlawful which arbitrarily classify jobs so that:

(1) A female is prohibited from applying for a job labeled "male," or for a job in a "male" line of progression; and vice versa.

(2) A male scheduled for layoff is prohibited from displacing a less senior female on a "female" seniority list; and vice versa.

(b) A seniority system or line of progression which distinguishes between "light" and "heavy" jobs constitutes an unlawful employment practice if it operates as a disguised form of classification by sex, or creates unreasonable obstacles to the advancement by members of either sex into jobs which members of that sex would reasonably be expected to perform.

§ 1604.4 Discrimination against married women.

(a) The Commission has determined that an employer's rule which forbids or restricts the employment of married women and which is not applicable to married men is a discrimination based on sex prohibited by title VII of the

Civil Rights Act. It does not seem to us relevant that the rule is not directed against all females, but only against married females, for so long as sex is a factor in the application of the rule, such application involves a discrimination based on sex.

(b) It may be that under certain circumstances, such a rule could be justified within the meaning of section 703 (e)(1) of title VII. We express no opinion on this question at this time except to point out that sex as a bona fide occupational qualification must be justified in terms of the peculiar requirements of the particular job and not on the basis of a general principle such as the desirability of spreading work.

§ 1604.5 Job opportunities advertising.

It is a violation of title VII for a help-wanted advertisement to indicate a preference, limitation, specification, or discrimination based on sex unless sex is a bona fide occupational qualification for the particular job involved. The placement of an advertisement in columns classified by publishers on the basis of sex, such as columns headed "Male" or "Female," will be considered an expression of a preference, limitation, specification, or discrimination based on sex.

§ 1604.6 Employment agencies.

(a) Section 703(b) of the Civil Rights Act specifically states that it shall be unlawful for an employment agency to discriminate against any individual because of sex. The Commission has determined that private employment agencies which deal exclusively with one sex are engaged in an unlawful employment practice, except to the extent that such agencies limit their services to furnishing employees for particular jobs for which sex is a bona fide occupational qualification.

(b) An employment agency that receives a job order containing an unlawful sex specification will share responsibility with the employer placing the job order if the agency fills the order knowing that the sex specification is not based upon a bona fide occupational qualification. However, an employment agency will not be deemed to be in violation of the law, regardless of the determination as to the employer, if the agency does not have reason to believe that the employer's claim of bona fide occupations qualification is without substance and the agency makes and maintains a written record available to the Commission of each such job order. Such record shall include the name of the employer, the description of the job and the basis for the employer's claim of bona fide occupational qualification.

(c) It is the responsibility of employment agencies to keep informed of opinions and decisions of the Commission on sex discrimination.

§ 1604.7 Pre-employment inquiries as to sex.

A pre-employment inquiry may ask "Male _____, Female _____"; or "Mr. Mrs. Miss," provided that the inquiry is made in good faith for a nondiscriminatory purpose. Any pre-employment inquiry in connection with prospective employment which expresses directly or indirectly any limitation, specification, or discrimination as to sex shall be unlawful unless based upon a bona fide occupational qualification.

§ 1604.8 Relationship of Title VII to the Equal Pay Act.

(a) The employee coverage of the prohibitions against discrimination based on sex contained in title VII is coextensive with that of the other prohibitions contained in title VII and is not limited by section 703(h) to those employees covered by the Fair Labor Standards Act.

(b) By virtue of section 703(h), a defense based on the Equal Pay Act may be raised in a proceeding under title VII.

(c) Where such a defense is raised the Commission will give appropriate consideration to the interpretations of the Administrator, Wage and Hour Division, Department of Labor, but will not be bound thereby.

§ 1604.9 Fringe benefits.

(a) "Fringe benefits," as used herein, includes medical, hospital, accident, life insurance and retirement benefits; profit-sharing and bonus plans; leave; and other terms, conditions, and privileges of employment.

(b) It shall be an unlawful employment practice for an employer to discriminate between men and women with regard to fringe benefits.

(c) Where an employer conditions benefits available to employees and their spouses and families on whether the employee is the "head of the household" or "principal wage earner" in the family unit, the benefits tend to be available only to male employees and their families. Due to the fact that such conditioning discriminatorily affects the rights of women employees, and that "head of household" or "principal wage earner" status bears no relationship to job performance, benefits which are so conditioned will be found a prima facie violation of the prohibitions against sex discrimination contained in the Act.

(d) It shall be an unlawful employment practice for an employer to make available benefits for the wives and families of male employees where the same benefits are not made available for the husbands and families of female employees; or to make available benefits for the wives of male employees which are not made available for female employees; or to make available benefits to the husbands of female employees which are not made available for male employees. An example of such an unlawful employment practice is a situation in which wives of male employees receive maternity benefits while female employees receive no such benefits.

(e) It shall not be a defense under title VIII to a charge of sex discrimination in benefits that the cost of such benefits is greater with respect to one sex than the other.

(f) It shall be an unlawful employment practice for an employer to have a pension or retirement plan which establishes different optional or compulsory retirement ages based on sex, or which differentiates in benefits on the basis of sex. A statement of the General Counsel of September 13, 1968, providing for a phasing out of differentials with regard to optional retirement age for certain incumbent employees is hereby withdrawn.

§ 1604.10 Employment policies relating to pregnancy and childbirth.

(a) A written or unwritten employment policy or practice which excludes from employment applicants or employees because of pregnancy is a prima facie violation of title VII.

(b) Disabilities caused or contributed to by pregnancy, miscarriage, abortion, childbirth, and recovery therefrom are, for all job-related purposes, temporary disabilities and should be treated as such under any health or temporary disability insurance or sick leave plan available in connection with employment. Written and unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement, and payment under any health or temporary disability insurance or sick leave plan, formal or informal, shall be applied to disability due to pregnancy or childbirth on the same terms and conditions as they are applied to other temporary disabilities.

(c) Where the termination of an employee who is temporarily disabled is caused by an employment policy under which insufficient or no leave is available, such a termination violates the Act if it has a disparate impact on employees of one sex and is not justified by business necessity.

Revised Order No. 4: Affirmative Action Program Guidelines of the Office of Federal Contract Compliance (For Executive Order 11246)

PART 60–2—AFFIRMATIVE ACTION PROGRAMS

Subpart A—General

Sec.
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60-2.2 Agency Action.

Subpart B—Required Contents of Affirmative Action Programs

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60-2.20 Development or reaffirmation of the equal employment opportunity policy.
60-2.21 Dissemination of the policy.
60-2.22 Responsibility for implementation.
60-2.23 Identification of problem areas by organizational units and job classifications.
60-2.24 Development and execution of programs.
60-2.25 Internal audit and reporting systems.
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Subpart D—Miscellaneous

60-2.30 Use of goals.
60-2.31 Preemption.
60-2.32 Supersedure.

AUTHORITY: 5 U.S.C. 553(a)(3)(B); 29 CFR 2.7; section 201, E.O. 11246, 30 FR 12319, and E.O. 11375, 32 FR 14303.

SOURCE: 36 F.R. 23152, Dec. 4, 1971.

Subpart A—General

§ 60–2.1 Title, purpose and scope.

This part shall also be known as "Revised Order No. 4." and shall cover nonconstruction contractors. Section 60–1.40 of this Chapter, Affirmative Action Compliance Programs, requires that within 120 days from the commencement of a contract each prime contractor or subcontractor with 50 or more employees and a contract of $50,000 or more develop a written affirmative action compliance program for each of its establishments, and such contractors are now further required to revise existing written affirmative action programs to include the changes embodied in this order within 120 days of its publication in the FEDERAL REGISTER. A review of agency compliance surveys indicates that many contractors do not have affirmative action programs on file at the time an establishment is visited by a compliance investigator. This part details the agency review procedure and the results of a contractor's failure to develop and maintain an affirmative action program and then set forth detailed guidelines to be used by contractors and Government agencies in developing and judging these programs as well as the good faith effort required to transform the programs from paper commitments to equal employment opportunity. Subparts B and C are concerned with affirmative action plans only.

Relief for members of an affected class who, by virtue of past discrimination, continue to suffer the present effects of that discrimination shall be provided in the conciliation agreement entered into pursuant to § 60–60.6 of this title. An "affected class" problem must be remedied in order for a contractor to be considered in compliance. Section 60–2.2 herein pertaining to an acceptable affirmative action program is also applicable to the failure to remedy discrimination against members of an "affected class."

[36 FR 23152, Dec. 4, 1971, as amended at 39 FR 5630, Feb. 14, 1974]

§ 60–2.2 Agency action.

(a) (1) Any contractor required by § 60–1.40 of this chapter to develop an affirmative action program at each of his establishments who has not complied fully with that section is not in compliance with Executive Order 11246, as amended (30 FR 12319). Until such programs are developed and found to be acceptable in accordance with the standards and guidelines set forth in §§ 60–2.10 through 60–2.32, the contractor is unable to comply with the employment opportunity clause. An affirmative action plan shall be deemed to have been accepted by the Government at the time appropriate compliance agency has accepted such plan unless within 45 days thereafter the Office of Federal Contract Compliance has disapproved such plan.

(2) The appropriate compliance agency shall notify the contractor and the Office of Federal Contract Compliance when it has accepted an affirmative action plan.

(b) If, in determining such contractor's responsibility for an award of a contract it comes to the contracting officer's attention, through sources within his agency or through the Office of Federal Contract Compliance or other Government agencies, that the contractor has not developed an acceptable affirmative action program at each of his establishments or has substantially deviated from such an approved affirmative action program, the contracting officer shall notify the Director and declare the contractor-bidder nonresponsible unless he can otherwise affirmatively determine that the contractor is able to comply with his equal employment obligations or, unless upon review, it is determined by the Director that substantial issues of law or fact exist as to the contractor's responsibility to the extent that a hearing is, in his sole judgment, required prior to a determination that the contractor is nonresponsible: *Provided*, That during any preaward conferences every effort shall be made through the processes of conciliation, mediation and persuasion to develop an acceptable affirmative action program meeting the standards and guidelines set forth in §§ 60–2.10 through 60–2.32 so that, in the performance of his contract, the contractor is able to meet his equal employment obligations in accordance with the equal opportunity clause and applicable rules, regulations, and orders: *Provided further*, That when the contractor-bidder is declared nonresponsible more than once for inability to comply with the equal employment opportunity clause a notice setting a timely hearing date shall be issued concurrently with the second nonresponsibility determination in accordance with the provisions of § 60–1.26 proposing to declare such contractor-bidder ineligible for future contracts and subcontracts.

(c) Immediately upon finding that a contractor has no affirmative action program or has deviated substantially from an approved affirmative action program or that his program is not acceptable, the contracting officer, the compliance agency representative or the representative of the Office of Federal Contract Compliance, whichever has made such a finding, shall notify officials of the appropriate compliance agency and the Office of Federal Contract Compliance of such fact. The compliance agency shall issue a notice to the contractor giving him 30 days to show cause why enforcement proceedings under section 209(b) of Executive Order 11246, as amended, should not be instituted.

(1) If the contractor fails to show good cause for his failure or fails to remedy that failure by developing and implementing an acceptable affirmative action program within 30 days, the compliance agency, upon the approval of the Director, shall immediately issue a notice of proposed cancellation or termination of existing contracts or subcontracts and debarment from future contracts and subcontracts pursuant to § 60–1.26 (b) of this chapter, giving the contractor 14 days to request a hearing. If a request for hearing has not been received within 14 days from such notice, such contractor will be declared ineligible for future contracts and current contracts will be terminated for default.

(2) During the "show cause" period of 30 days every effort shall be made by the compliance agency through conciliation, mediation, and persuasion to resolve the deficiencies which led to the determination of nonresponsibility. If satisfactory adjustments designed to bring the contractor into compliance are not concluded, the compliance agency, with the prior approval of the Director, shall promptly commence formal proceedings leading to the cancellation or termination of existing contracts or subcontracts and debarment from future contracts and subcontracts under § 60–1.26(b) of this chapter.

(d) During the "show cause" period and formal proceedings, each contracting agency must continue to determine the contractor's responsibility in considering whether or not to award a new or additional contract.

[38 FR 2970, Jan. 31, 1973]

Subpart B—Required Contents of Affirmative Action Programs

§ 60–2.10 Purpose of affirmative action program.

An affirmative action program is a set of specific and result-oriented procedures to which a contractor commits himself to apply every good faith effort. The objective of those procedures plus such efforts is equal employment opportunity. Procedures without effort to make them work are meaningless; and effort, undirected by specific and meaningful procedures, is inadequate. An acceptable affirmative action program must include an analysis of areas within which the contractor is deficient in the utilization of minority groups and women, and further, goals and timetables to which the contractor's good faith efforts must be directed to correct the deficiencies and, thus to achieve prompt and full utilization of minorities and women, at all levels and in all segments of his work force where deficiencies exist.

[36 FR 23152, Dec. 4, 1971, as amended at 39 FR 5630, Feb. 14, 1974]

§ 60–2.11 Required utilization analysis.

Based upon the Government's experience with compliance reviews under the Executive order programs and the contractor reporting system, minority groups are most likely to be underutilized in departments and jobs within departments that fall within the following Employer's Information Report (EEO–1) designations: officials and managers, professionals, technicians, sales workers, office and clerical and craftsmen (skilled). As categorized by the EEO–1 designations, women are likely to be underutilized in departments and jobs within departments as follows: officials and managers, professionals, technicians, sales workers (except over-the-counter sales in certain retail establishments), craftsmen (skilled and semi-skilled). Therefore, the contractor shall direct special attention to such jobs in his analysis and goal setting for minorities and women. Affirmative action programs must contain the following information:

(a) Workforce analysis which is defined as a listing of each job classification as appears in applicable collective bargaining agreements or payroll records (not job group) ranked from the lowest paid to the highest paid within each department or other similar organizational unit including departmental or unit supervision. If there are separate work units or lines of progression within a department a separate list must be provided for each such work unit, or line, including unit supervisors. For lines of progression there must be indicated the order of jobs in the line through which an employee could move to the top of the line. For each job classification, the total number of male and female incumbents, and the total number of male and female incumbents in each of the following groups must be given: Blacks, Spanish-surnamed Americans, American Indians, and Orientals. The wage rate or salary range for each job classification should be given. All job classifications, including all managerial job classifications, must be listed.

(b) An analysis of all major job classifications at the facility, with explanation if minorities or women are currently being underutilized in any one or more job classifications (job "classification" herein meaning one or a group of jobs having similar content, wage rates and opportunities). "Underutilization" is defined as having fewer minorities or women in a particular job classification than would reasonably be expected by their availability. In making the work force analysis, the contractor shall conduct such analysis separately for minorities and women.

(1) In determining whether minorities are being underutilized in any job classification the contractor will consider at least all of the following factors:

(i) The minority population of the labor area surrounding the facility;

(ii) The size of the minority unemployment force in the labor area surrounding the facility;

(iii) The percentage of the minority work force as compared with the total work force in the immediate labor area;

(iv) The general availability of minorities having requisite skills in the immediate labor area;

(v) The availability of minorities having requisite skills in an area in which the contractor can reasonably recruit;

(vi) The availability of promotable and transferable minorities within the contractor's organization;

(vii) The existence of training institutions capable of training persons in the requisite skills; and

(viii) The degree of training which the contractor is reasonably able to undertake as a means of making all job classes available to minorities.

(2) In determining whether women are being underutilized in any job classification, the contractor will consider at least all of the following factors:

(i) The size of the female unemployment force in the labor area surrounding the facility;

(ii) The percentage of the female workforce as compared with the total workforce in the immediate labor area;

(iii) The general availability of women having requisite skills in the immediate labor area;

(iv) The availability of women having requisite skills in an area in which the contractor can reasonably recruit;

(v) The availability of women seeking employment in the labor or recruitment area of the contractor;

(vi) The availability of promotable and transferable female employees within the contractor's organization;

(vii) The existence of training institutions capable of training persons in the requisite skills; and

(viii) The degree of training which the contractor is reasonably able to undertake as a means of making all job classes available to women.

[36 FR 23152, Dec. 4, 1971, as amended at 39 FR 5630, Feb. 14, 1974]

§ 60–2.12 Establishment of goals and timetables.

(a) The goals and timetables developed by the contractor should be attainable in terms of the contractor's analysis of his deficiencies and his entire affirmative action program. Thus, in establishing the size of his goals and the length of his timetables, the contractor should consider the results which could reasonably be expected from his putting forth every good faith effort to make his overall affirmative action program work. In determining levels of goals, the contractor should consider at least the factors listed in § 60–2.11.

(b) Involve personnel relations staff, department and division heads, and local and unit managers in the goal setting process.

(c) Goals should be significant, measurable and attainable.

(d) Goals should be specific for planned results, with timetables for completion.

(e) Goals may not be rigid and inflexible quotas which must be met, but must be targets reasonably attainable by means of applying every good faith effort to make all aspects of the entire affirmative action program work.

(f) In establishing timetables to meet goals and commitments, the contractor will consider the anticipated expansion, contraction and turnover of and in the work force.

(g) Goals, timetables and affirmative action commitments must be designed to correct any identifiable deficiencies.

(h) Where deficiencies exist and where numbers or percentages are relevant in developing corrective action, the contractor shall establish and set forth specific goals and timetables separately for minorities and women.

(i) Such goals and timetables, with supporting data and the analysis thereof shall be a part of the contractor's written affirmative action program and shall be maintained at each establishment of the contractor.

(j) Where the contractor has not established a goal, his written affirmative action program must specifically analyze each of the factors listed in 60–2.11 and must detail his reason for a lack of a goal.

(k) In the event it comes to the attention of the compliance agency or the Office of Federal Contract Compliance that there is a substantial disparity in the utilization of a particular minority group or men or women of a particular minority group, the compliance agency or OFCC may require separate goals and timetables for such minority group and may further require, where appropriate, such goals and timetables by sex for such group for such job classifications and organizational units specified by the compliance agency or OFCC.

(l) Support data for the required analysis and program shall be compiled and maintained as part of the contractor's affirmative action program. This data

will include but not be limited to progression line charts, seniority rosters, applicant flow data, and applicant rejection ratios indicating minority and sex status.

(m) Copies of affirmative action programs and/or copies of support data shall be made available to the compliance agency or the Office of Federal Contract Compliance, at the request of either, for such purposes as may be appropriate to the fulfillment of their responsibilities under Executive Order 11246, as amended.

§ 60–2.13 Additional required ingredients of affirmative action programs.

Effective affirmative action programs shall contain, but not necessarily be limited to, the following ingredients:

(a) Development or reaffirmation of the contractor's equal employment opportunity policy in all personnel actions.

(b) Formal internal and external dissemination of the contractor's policy.

(c) Establishment of responsibilities for implementation of the contractor's affirmative action program.

(d) Identification of problem areas (deficiencies) by organizational units and job classification.

(e) Establishment of goals and objectives by organizational units and job classification, including timetables for completion.

(f) Development and execution of action oriented programs designed to eliminate problems and further designed to attain established goals and objectives.

(g) Design and implementation of internal audit and reporting systems to measure effectiveness of the total program.

(h) Compliance or personnel policies and practices with the Sex Discrimination Guidelines (41 CFR Part 60–20).

(i) Active support of local and national community action programs and community service programs, designed to improve the employment opportunities of minorities and women.

(j) Consideration of minorities and women not currently in the workforce having requisite skills who can be recruited through affirmative action measures.

§ 60–2.14 Compliance status.

No contractor's compliance status shall be judged alone by whether or not he reaches his goals and meets his timetables. Rather, each contractor's compliance posture shall be reviewed and determined by reviewing the contents of his program, the extent of his adherence to this program, and his good faith efforts to make his program work toward the realization of the program's goals within the timetables set for completion. There follows an outline of examples of procedures that contractors and Federal agencies should use as a guideline for establishing, implementing, and judging an acceptable affirmative action program.

Subpart C—Methods of Implementing the Requirements of Subpart B

§ 60–2.20 Development or reaffirmation of the equal employment opportunity policy.

(a) The contractor's policy statement should indicate the chief executive officers' attitude on the subject matter, assign overall responsibility and provide for a reporting and monitoring procedure. Specific items to be mentioned should include, but not limited to:

(1) Recruit, hire, train, and promote persons in all job classifications, without regard to race, color, religion, sex, or national origin, except where sex is a bona fide occupational qualification. (The term "bona fide occupational qualification" has been construed very narrowly under the Civil Rights Act of 1964 Under Executive Order 11246 as amended and this part, this term will be construed in the same manner.)

(2) Base decisions on employment so as to further the principle of equal employment opportunity.

(3) Insure that promotion decisions are in accord with principles of equal employment opportunity by imposing only valid requirements for promotional opportunities.

(4) Insure that all personnel actions such as compensation, benefits, transfers, layoffs, return from layoff, company sponsored training, education, tuition assistance, social and recreation programs, will be administered without regard to race, color, religion, sex, or national origin.

§ 60–2.21 Dissemination of the policy.

(a) The contractor should disseminate his policy internally as follows:

(1) Include it in contractor's policy manual.

(2) Publicize it in company newspaper, magazine, annual report and other media.

(3) Conduct special meetings with executive, management, and supervisory personnel to explain intent of policy and individual responsibility for effective implementation, making clear the chief executive officer's attitude.

(4) Schedule special meetings with all other employees to discuss policy and explain individual employee responsibilities.

(5) Discuss the policy thoroughly in both employee orientation and management training programs.

(6) Meet with union officials to inform them of policy, and request their cooperation.

(7) Include nondiscrimination clauses in all union agreements, and review all contractual provisions to ensure they are nondiscriminatory.

(8) Publish articles covering EEO programs, progress reports, promotions, etc., of minority and female employees, in company publications.

(9) Post the policy on company bulletin boards.

(10) When employees are featured in product or consumer advertising, employee handbooks or similar publications both minority and nonminority, men and women should be pictured.

(11) Communicate to employees the existence of the contractors affirmative action program and make available such elements of his program as will enable such employees to know of and avail themselves of its benefits.

(b) The contractor should disseminate his policy externally as follows:

(1) Inform all recruiting sources verbally and in writing of company policy, stipulating that these sources actively recruit and refer minorities and women for all positions listed.

(2) Incorporate the Equal Opportunity clause in all purchase orders, leases, contracts, etc., covered by Executive Order 11246, as amended, and its implementing regulations.

(3) Notify minority and women's organizations, community agencies, community leaders, secondary schools and colleges, of company policy, preferably in writing.

(4) Communicate to prospective employees the existence of the contractor's affirmative action program and make available such elements of his program as will enable such prospective employees to know of and avail themselves of its benefits.

(5) When employees are pictured in consumer or help wanted advertising, both minorities and nonminority men and women should be shown.

(6) Send written notification of company policy to all subcontractors, vendors and suppliers requesting appropriate action on their part.

§ 60–2.22 Responsibility for implementation.

(a) An executive of the contractor should be appointed as director or manager of company Equal Opportunity Programs. Depending upon the size and geographical alignment of the company, this may be his or her sole responsibility. He or she should be given the necessary top management support and staffing to execute the assignment. His or her identity should appear on all internal and external communications on the company's Equal Opportunity Programs. His or her responsibilities should include, but not necessarily be limited to:

(1) Developing policy statements, affirmative action programs, internal and external communication techniques.

(2) Assisting in the identification of problem areas.

(3) Assisting line management in arriving at solutions to problems.

(4) Designing and implementing audit and reporting systems that will:

(i) Measure effectiveness of the contractor's programs.

(ii) Indicate need for remedial action.

(iii) Determine the degree to which the contractor's goals and objectives have been attained.

(5) Serve as liaison between the contractor and enforcement agencies.

(6) Serve as liaison between the contractor and minority organizations, women's organizations and community action groups concerned with employment opportunities of minorities and women.

(7) Keep management informed of latest developments in the entire equal opportunity area.

(b) Line responsibilities should include, but not be limited to, the following:

(1) Assistance in the identification of problem areas and establishment of local and unit goals and objectives.

(2) Active involvement with local minority organizations, women's organizations, community action groups and community service programs.

(3) Periodic audit of training pro-

grams, hiring and promotion patterns to remove impediments to the attainment of goals and objectives.

(4) Regular discussions with local managers, supervisors and employees to be certain the contractor's policies are being followed.

(5) Review of the qualifications of all employees to insure that minorities and women are given full opportunities for transfers and promotions.

(6) Career counseling for all employees.

(7) Periodic audit to insure that each location is in compliance in area such as:

(i) Posters are properly displayed.

(ii) All facilities, including company housing, which the contractor maintains for the use and benefit of his employees, are in fact desegregated, both in policy and use. If the contractor provides facilities such as dormitories, locker rooms and rest rooms, they must be comparable for both sexes.

(iii) Minority and female employees are afforded a full opportunity and are encouraged to participate in all company sponsored educational, training, recreational and social activities.

(8) Supervisors should be made to understand that their work performance is being evaluated on the basis of their equal employment opportunity efforts and results, as well as other criteria.

(9) It shall be a responsibility of supervisors to take actions to prevent harassment of employees placed through affirmative action efforts.

§ 60–2.23 Identification of problem areas by organizational units and job classifications.

(a) An in-depth analysis of the following should be made, paying particular attention to trainees and those categories listed in § 60–2.11(d).

(1) Composition of the work force by minority group status and sex.

(2) Composition of applicant flow by minority group status and sex.

(3) The total selection process including position descriptions, position titles, worker specifications, application forms, interview procedures, test administration, test validity, referral procedures, final selection process, and similar factors.

(4) Transfer and promotion practices.

(5) Facilities, company sponsored recreation and social events, and special programs such as educational assistance.

(6) Seniority practices and seniority provisions of union contracts.

(7) Apprenticeship programs.

(8) All company training programs, formal and informal.

(9) Work force attitude.

(10) Technical phases of compliance, such as poster and notification to labor unions, retention of applications, notification to subcontractors, etc.

(b) If any of the following items are found in the analysis, special corrective action should be appropriate.

(1) An "underutilization" of minorities or women in specific work classifications.

(2) Lateral and/or vertical movement of minority or female employees occurring at a lesser rate (compared to work force mix) than that of nonminority or male employees.

(3) The selection process eliminates a significantly higher percentage of minorities or women than nonminorities or men.

(4) Application and related preemployment forms not in compliance with Federal legislation.

(5) Position descriptions inaccurate in relation to actual functions and duties.

(6) Tests and other selection techniques not validated as required by the OFCC Order on Employee Testing and other Selection Procedures.

(7) Test forms not validated by location, work performance and inclusion of minorities and women in sample.

(8) Referral ratio of minorities or women to the hiring supervisor or manager indicates a significantly higher percentage are being rejected as compared to nonminority and male applicants.

(9) Minorities or women are excluded from or are not participating in company sponsored activities or programs.

(10) De facto segregation still exists at some facilities.

(11) Seniority provisions contribute to overt or inadvertent discrimination, i.e., a disparity by minority group status or sex exists between length of service and types of job held.

(12) Nonsupport of company policy by managers, supervisors or employees.

(13) Minorities or women underutilized or significantly underrepresented in training or career improvement programs.

(14) No formal techniques established for evaluating effectiveness of EEO programs.

(15) Lack of access to suitable housing inhibits recruitment efforts and employment of qualified minorities.

(16) Lack of suitable transportation (public or private) to the work place inhibits minority employment.

(17) Labor unions and subcontractors not notified of their responsibilities.

(18) Purchase orders do not contain EEO clause.

(19) Posters not on display.

§ 60–2.24 Development and execution of programs.

(a) The contractor should conduct detailed analyses of position descriptions to insure that they accurately reflect position functions, and are consistent for the same position from one location to another.

(b) The contractor should validate worker specifications by division, department, location or other organizational unit and by job category using job performance criteria. Special attention should be given to academic, experience and skill requirements to insure that the requirements in themselves do not constitute inadvertent discrimination. Specifications should be consistent for the same job classification in all locations **and should be free from bias as regards to race, color, religion, sex, or national origin, except where sex is a bona fide occupational qualification. Where requirements screen out a disproportionate number of minorities or women such requirements should be professionally validated to job performance.**

(c) Approved position descriptions and worker specifications, when used by the contractor, should be made available to all members of management involved in the recruiting, screening, selection, and promotion process. Copies should also be distributed to all recruiting sources.

(d) The contractor should evaluate the total selection process to insure freedom from bias and, thus, aid the attainment of goals and objectives.

(1) All personnel involved in the recruiting, screening, selection, promotion, disciplinary, and related processes should be carefully selected and trained to insure elimination of bias in all personnel actions.

(2) The contractor shall observe the requirements of the OFCC Order pertaining to the validation of employee tests and other selection procedures.

(3) Selection techniques other than tests may also be improperly used so as to have the effect of discriminating against minority groups and women. Such techniques include but are not restricted to, unscored interviews, unscored or casual application forms, arrest records, credit checks, considerations of marital status or dependency or minor children. Where there exist data suggesting that such unfair discrimination or exclusion of minorities or women exists, the contractor should analyze his unscored procedures and eliminate them if they are not objectively valid.

(e) Suggested techniques to improve recruitment and increase the flow of minority or female applicants follow:

(1) Certain organizations such as the Urban League, Job Corps, Equal Opportunity Programs, Inc., Concentrated Employment Programs, Neighborhood Youth Corps, Secondary Schools, Colleges, and City Colleges with high minority enrollment, the State Employment Service, specialized employment agencies, Aspira, LULAC, SER, the G.I. Forum, the Commonwealth of Puerto Rico are normally prepared to refer minority applicants. Organizations prepared to refer women with specific skills are: National Organization for Women, Welfare Rights Organizations, Women's Equity Action League, Talent Bank from Business and Professional Women (including 26 women's organizations), Professional Women's Caucus, Intercollegiate Association of University Women, Negro Women's sororities and service groups such as Delta Sigma Theta, Alpha Kappa Alpha, and Zeta Phi Beta; National Council of Negro Women, American Association of University Women, YWCA, and sectarian groups such as Jewish Women's Groups, Catholic Women's Groups and Protestant Women's Groups, and women's colleges. In addition, community leaders as individuals shall be added to recruiting sources.

(2) Formal briefing sessions should be held, preferably on company premises, with representatives from these recruiting sources. Plant tours, presentations by minority and female employees, clear and concise explanations of current and future job openings, position descriptions, worker specifications, explanations of the company's selection process, and recruiting literature should be an integral part of the briefings. Formal ar-

rangements should be made for referral of applicants, followup with sources, and feedback on disposition of applicants.

(3) Minority and female employees, using procedures similar to subparagraph (2) of this paragraph, should be actively encouraged to refer applicants.

(4) A special effort should be made to include minorities and women on the Personnel Relations staff.

(5) Minority and female employees should be made available for participation in Career Days, Youth Motivation Programs, and related activities in their communities.

(6) Active participation in "Job Fairs" is desirable. Company representatives so participating should be given authority to make on-the-spot commitments.

(7) Active recruiting programs should be carried out at secondary schools, junior colleges, and colleges with predominant minority or female enrollments.

(8) Recruiting efforts at all schools should incorporate special efforts to reach minorities and women.

(9) Special employment programs should be undertaken whenever possible. Some possible programs are:

(i) Technical and nontechnical co-op programs with predominately Negro and women's colleges.

(ii) "After school" and/or work-study jobs for minority youths, male and females.

(iii) Summer jobs for underprivileged youth, male and female.

(iv) Summer work-study programs for male and female faculty members of the predominantly minority schools and colleges.

(v) Motivation, training and employment programs for the hard-core unemployed, male and female.

(10) When recruiting brochures pictorially present work situations, the minority and female members of the work force should be included, especially when such brochures are used in school and career programs.

(11) Help wanted advertising should be expanded to include the minority news media and women's interest media on a regular basis.

(f) The contractor should insure that minority and female employees are given equal opportunity for promotion. Suggestions for achieving this result include:

(1) Post or otherwise announce promotional opportunities.

(2) Make an inventory of current minority and female employees to determine academic, skill and experience level of individual employees.

(3) Initiate necessary remedial, job training and workstudy programs.

(4) Develop and implement formal employee evaluation programs.

(5) Make certain "worker specifications" have been validated on job performance related criteria. (Neither minority nor female employees should be required to possess higher qualifications than those of the lowest qualified incumbent.)

(6) When apparently qualified minority or female employees are passed over for upgrading, require supervisory personnel to submit written justification.

(7) Establish formal career counseling programs to include attitude development, education aid, job rotation, buddy system and similar programs.

(8) Review seniority practices and seniority clauses in union contracts to insure such practices or clauses are nondiscriminatory and do not have a discriminatory effect.

(g) Make certain facilities and company-sponsored social and recreation activities are desegregated. Actively encourage all employees to participate.

(h) Encourage child care, housing and transportation programs appropriately designed to improve the employment opportunities for minorities and women.

§ 60–2.25 Internal audit and reporting systems.

(a) The contractor should monitor records of referrals, placements, transfers, promotions and terminations at all levels to insure nondiscriminatory policy is carried out.

(b) The contractor should require formal reports from unit managers on a schedule basis as to degree to which corporate or unit goals are attained and timetables met.

(c) The contractor should review report results with all levels of management.

(d) The contractor should advise top management of program effectiveness and submit recommendations to improve unsatisfactory performance.

§ 60–2.26 Support of action programs.

(a) The contractor should appoint key members of management to serve on Merit Employment Councils, Community Relations Boards and similar organizations.

(b) The contractor should encourage minority and female employees to participate actively in National Alliance of Businessmen programs for youth motivation.

(c) The contractor should support Vocational Guidance Institutes, Vestibule Training Programs and similar activities.

(d) The contractor should assist secondary schools and colleges in programs designed to enable minority and female graduates of these institutions to compete in the open employment market on a more equitable basis.

(e) The contractor should publicize achievements of minority and female employees in local and minority news media.

(f) The contractor should support programs developed by such organizations as National Alliance of Businessmen, the Urban Coalition and other organizations concerned with employment opportunities for minorities or women.

Subpart D—Miscellaneous

§ 60–2.30 Use of goals.

The purpose of a contractor's establishment and use of goals is to insure that he meet his affirmative action obligation. It is not intended and should not be used to discriminate against any applicant or employee because of race, color, religion, sex, or national origin.

§ 60–2.31 Preemption.

To the extent that any State or local laws, regulations or ordinances, including those which grant special benefits to persons on account of sex, are in conflict with Executive Order 11246, as amended, or with the requirements of this part, we will regard them as preempted under the Executive order.

§ 60–2.32 Supersedure.

All orders, instructions, regulations, and memoranda of the Secretary of Labor, other officials of the Department of Labor and contracting agencies are hereby superseded to the extent that they are inconsistent herewith, including a previous "Order No. 4" from this Office dated January 30, 1970. Nothing in this part is intended to amend 41 CFR 60–3 published in the FEDERAL REGISTER on October 2, 1971 or Employee Testing and Other Selection Procedures or 41 CFR 60–20 on Sex Discrimination Guidelines.

Sex Discrimination Guidelines of the Office of Federal Contract Compliance

PART 60–20—SEX DISCRIMINATION GUIDELINES

Sec.
60–20.1 Title and purpose.
60–20.2 Recruitment and advertisement.
60–20.3 Job policies and practices.
60–20.4 Seniority system.
60–20.5 Discriminatory wages.
60–20.6 Affirmative action.

AUTHORITY: The provisions of this Part 60–20 issued under sec. 201, E.O. 11246, 30 F.R. 12319, and E.O. 11375, 32 F.R. 14303.

SOURCE: The provisions of this Part 60–20 appear at 35 F.R. 8888, June 9, 1970, unless otherwise noted.

§ 60–20.1 Title and purpose.

The purpose of the provisions in this part is to set forth the interpretations and guidelines of the Office of Federal Contract Compliance regarding the implementation of Executive Order 11375 for the promotion and insuring of equal opportunities for all persons employed or seeking employment with Government contractors and subcontractors or with contractors and subcontractors performing under federally assisted construction contracts, without regard to sex. Experience has indicated that special problems related to the implementation of Executive Order 11375 require a definitive treatment beyond the terms of the order itself. These interpretations are to be read in connection with existing regulations, set forth in Part 60–1 of this chapter.

§ 60–20.2 Recruitment and advertisement.

(a) Employers engaged in recruiting activity must recruit employees of both sexes for all jobs unless sex is a bona fide occupational qualification.

(b) Advertisement in newspapers and other media for employment must not express a sex preference unless sex is a bona fide occupational qualification for the job. The placement of an advertisement in columns headed "Male" or "Female" will be considered an expression of a preference, limitation, specification, or discrimination based on sex.

§ 60–20.3 Job policies and practices.

(a) Written personnel policies relating to this subject area must expressly indicate that there shall be no discrimination against employees on account of sex. If the employer deals with a bargaining representative for his employees and there is a written agreement on conditions of employment, such agreement shall not be inconsistent with these guidelines.

(b) Employees of both sexes shall have an equal opportunity to any available job that he or she is qualified to perform, unless sex is a bona fide occupational qualification.

NOTE: In most Government contract work there are only limited instances where valid reasons can be expected to exist which would justify the exclusion of all men or all women from any given job.

(c) The employer must not make any distinction based upon sex in employment opportunities, wages, hours, or other conditions of employment. In the area of employer contributions for insurance, pensions, welfare programs and other similar "fringe benefits" the employer will not be considered to have violated these guidelines if his contributions are the same for men and women or if the resulting benefits are equal.

(d) Any distinction between married and unmarried persons of one sex that is not made between married and unmarried persons of the opposite sex will be considered to be a distinction made on the basis of sex. Similarly, an employer must not deny employment to women with young children unless it has the same exclusionary policies for men; or terminate an employee of one sex in a particular job classification upon reaching a certain age unless the same rule is applicable to members of the opposite sex.

(e) The employer's policies and practices must assure appropriate physical facilities to both sexes. The employer may not refuse to hire men or women, or deny men or women a particular job because there are no restroom or associated facilities, unless the employer is able to show that the construction of the facilities would be unreasonable for such reasons as excessive expense or lack of space.

(f) (1) An employer must not deny a female employee the right to any job that she is qualified to perform in reliance upon a State "protective" law. For example, such laws include those which prohibit women from performing in certain types of occupations (e.g., a bartender or a core-maker); from working at jobs requiring more than a certain number of hours; and from working at jobs that require lifting or carrying more than designated weights.

(2) Such legislation was intended to be beneficial, but, instead, has been found to result in restricting employment opportunities for men and/or women. Accordingly, it cannot be used as a basis for denying employment or for establishing sex as a bona fide occupational qualification for the job.

(g) (1) Women shall not be penalized in their conditions of employment because they require time away from work on account of childbearing. When, under the employer's leave policy the female employee would qualify for leave, then childbearing must be considered by the employer to be a justification for leave of absence for female employees for a reasonable period of time. For example, if the female employee meets the equally applied minimum length of service requirements for leave time, she must be granted a reasonable leave on account of childbearing. The conditions applicable to her leave (other than the length thereof) and to her return to employment, shall be in accordance with the employer's leave policy.

(2) If the employer has no leave policy, childbearing must be considered by the employer to be a justification for a leave of absence for a female employee for a reasonable period of time. Following childbirth, and upon signifying her intent to return within a reasonable time, such female employee shall be reinstated to her original job or to a position of like status and pay, without loss of service credits.

(h) The employer must not specify any differences for male and female employees on the basis of sex in either mandatory or optional retirement age.

(i) Nothing in these guidelines shall be interpreted to mean that differences in capabilities for job assignments do not exist among individuals and that such distinctions may not be recognized by the employer in making specific assignments. The purpose of these guidelines is to insure that such distinctions are not based upon sex.

§ 60–20.4 Seniority system.

Where they exist, seniority lines and lists must not be based solely upon sex. Where such a separation has existed, the employer must eliminate this distinction.

§ 60–20.5 Discriminatory wages.

(a) The employer's wages schedules must not be related to or based on the sex of the employees.

NOTE. The more obvious cases of discrimination exist where employees of different sexes are paid different wages on jobs which require substantially equal skill, effort and responsibility, and are performed under similar working conditions.

(b) The employer may not discriminatorily restrict one sex to certain job classifications. In such a situation, the employer must take steps to make jobs available to all qualified employees in all classifications without regard to sex. (Example: An electrical manufacturing company may have a production division with three functional units: One (assembly) all female; another (wiring), all male; and a third (circuit boards), also all male. The highest wage attainable in the assembly unit is considerably less than that in the circuit board and wiring units. In such a case the employer must take steps to provide qualified female employees opportunity for placement in job openings in the other two units.)

(c) To avoid overlapping and conflicting administration the Director will consult with the Administrator of the Wage

and Hour Administration before issuing an opinion on any matter covered by both the Equal Pay Act and Executive Order 11246, as amended by Executive Order 11375.

§ 60–20.6 Affirmative action.

(a) The employer shall take affirmative action to recruit women to apply for those jobs where they have been previously excluded.

NOTE. This can be done by various methods. Examples include: (1) including in itineraries of recruiting trips women's colleges where graduates with skills desired by the employer can be found, and female students of coeducational institutions and (2) designing advertisements to indicate that women will be considered equally with men for jobs.

(b) Women have not been typically found in significant numbers in management. In many companies management trainee programs are one of the ladders to management positions. Traditionally, few, if any, women have been admitted into these programs. An important element of affirmative action shall be a commitment to include women candidates in such programs.

(c) Distinctions based on sex may not be made in other training programs. Both sexes should have equal access to all training programs and affirmative action programs should require a demonstration by the employer that such access has been provided.

HEW Title IX Regulations

PART 86—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITING FROM FEDERAL FINANCIAL ASSISTANCE

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Source: 40 FR 24128, June 4, 1975, unless otherwise noted.

Subpart A—Introduction

§ 86.1 Purpose and effective date.

The purpose of this part is to effectuate title IX of the Education Amendments of 1972, as amended by Pub. L. 93-568, 88 Stat. 1855 (except sections 904 and 906 of those Amendments) which is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance, whether or not such program or activity is offered or sponsored by an educational institution as defined in this part. This part is also intended to effectuate section 844 of the Education Amendments of 1974, Pub. L. 93-380, 88 Stat. 484. The effective date of this part shall be July 21, 1975.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682, as amended by Pub. L. 93-568, 88 Stat. 1855, and Sec. 844, Education Amendments of 1974, 88 Stat. 484, Pub. L. 93-380)

§ 86.2 Definitions.

As used in this part, the term—

(a) *"Title IX"* means title IX of the Education Amendments of 1972, Pub. L. 92-318, as amended by section 3 of Pub. L. 93-568, 88 Stat. 1855, except sections 904 and 906 thereof; 20 U.S.C. 1681, 1682, 1683, 1685, 1686.

(b) *"Department"* means the Department of Health, Education, and Welfare.

(c) *"Secretary"* means the Secretary of Health, Education, and Welfare.

(d) *"Director"* means the Director of the Office for Civil Rights of the Department.

(e) *"Reviewing Authority"* means that component of the Department delegated authority by the Secretary to appoint, and to review the decisions of, administrative law judges in cases arising under this part.

(f) *"Administrative law judge"* means a person appointed by the reviewing authority to preside over a hearing held under this part.

(g) *"Federal financial assistance"* means any of the following, when authorized or extended under a law administered by the Department:

(1) A grant or loan of Federal financial assistance, including funds made available for:

(i) The acquisition, construction, renovation, restoration, or repair of a building or facility or any portion thereof; and

(ii) Scholarships, loans, grants, wages or other funds extended to any entity for payment to or on behalf of students admitted to that entity, or extended directly to such students for payment to that entity.

(2) A grant of Federal real or personal property or any interest therein, including surplus property, and the proceeds of the sale or transfer of such property, if the Federal share of the fair market value of the property is not, upon such sale or transfer, properly accounted for to the Federal Government.

(3) Provision of the services of Federal personnel.

(4) Sale or lease of Federal property or any interest therein at nominal consideration, or at consideration reduced for the purpose of assisting the recipient or in recognition of public interest to be served thereby, or permission to use Federal property or any interest therein without consideration.

(5) Any other contract, agreement, or arrangement which has as one of its purposes the provision of assistance to any education program or activity, except a contract of insurance or guaranty.

(h) *"Recipient"* means any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person, to whom Federal financial assistance is extended directly or through another recipient and which operates an education program or activity which receives or benefits from such assistance, including any subunit, successor, assignee, or transferee thereof.

(i) *"Applicant"* means one who submits an application, request, or plan required to be approved by a Department official, or by a recipient, as a condition to becoming a recipient.

(j) *"Educational institution"* means a local educational agency (L.E.A.) as defined by section 801(f) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 881), a preschool, a private elementary or secondary school, or an applicant or recipient of the type defined by paragraph (k), (l), (m), or (n) of this section.

(k) *"Institution of graduate higher education"* means an institution which:

(1) Offers academic study beyond the bachelor of arts or bachelor of science degree, whether or not leading to a certificate of any higher degree in the liberal arts and sciences; or

(2) Awards any degree in a professional field beyond the first professional degree (regardless of whether the first professional degree in such field is awarded by an institution of undergraduate higher education or professional education); or

(3) Awards no degree and offers no further academic study, but operates ordinarily for the purpose of facilitating research by persons who have received the highest graduate degree in any field of study.

(l) *"Institution of undergraduate higher education"* means:

(1) An institution offering at least two but less than four years of college level study beyond the high school level, leading to a diploma or an associate degree, or wholly or principally creditable toward

a baccalaureate degree; or

(2) An institution offering academic study leading to a baccalaureate degree; or

(3) An agency or body which certifies credentials or offers degrees, but which may or may not offer academic study.

(m) *"Institution of professional education"* means an institution (except any institution of undergraduate higher education) which offers a program of academic study that leads to a first professional degree in a field for which there is a national specialized accrediting agency recognized by the United States Commissioner of Education.

(n) *"Institution of vocational education"* means a school or institution (except an institution of professional or graduate or undergraduate higher education) which has as its primary purpose preparation of students to pursue a technical, skilled, or semiskilled occupation or trade, or to pursue study in a technical field, whether or not the school or institution offers certificates, diplomas, or degrees and whether or not it offers fulltime study.

(o) *"Administratively separate unit"* means a school, department or college of an educational institution (other than a local educational agency) admission to which is independent of admission to any other component of such institution.

(p) *"Admission"* means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an education program or activity operated by a recipient.

(q) *"Student"* means a person who has gained admission.

(r) *"Transition plan"* means a plan subject to the approval of the United States Commissioner of Education pursuant to section 901(a)(2) of the Education Amendments of 1972, under which an educational institution operates in making the transition from being an educational institution which admits only students of one sex to being one which admits students of both sexes without discrimination.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.3 Remedial and affirmative action and self-evaluation.

(a) *Remedial action.* If the Director finds that a recipient has discriminated against persons on the basis of sex in an education program or activity, such recipient shall take such remedial action as the Director deems necessary to overcome the effects of such discrimination.

(b) *Affirmative action.* In the absence of a finding of discrimination on the basis of sex in an education program or activity, a recipient may take affirmative action to overcome the effects of conditions which resulted in limited participation therein by persons of a particular sex. Nothing herein shall be interpreted to alter any affirmative action obligations which a recipient may have under Executive Order 11246.

(c) *Self-evaluation.* Each recipient education institution shall, within one year of the effective date of this part:

(i) Evaluate, in terms of the requirements of this part, its current policies and practices and the effects thereof concerning admission of students, treatment of students, and employment of both academic and non-academic personnel working in connection with the recipient's education program or activity;

(ii) Modify any of these policies and practices which do not or may not meet the requirements of this part; and

(iii) Take appropriate remedial steps to eliminate the effects of any discrimination which resulted or may have resulted from adherence to these policies and practices.

(d) *Availability of self-evaluation and related materials.* Recipients shall maintain on file for at least three years following completion of the evaluation required under paragraph (c) of this section, and shall provide to the Director upon request, a description of any modifications made pursuant to paragraph (c)(ii) of this section and of any remedial steps taken pursuant to paragraph (c)(iii) of this section.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[40 FR 21428, June 4, 1975; 40 FR 39506, Aug. 28, 1975]

§ 86.4 Assurance required.

(a) *General.* Every application for Federal financial assistance for any education program or activity shall as condition of its approval contain or be accompanied by an assurance from the applicant or recipient, satisfactory to the Director, that each education program or activity operated by the applicant or recipient and to which this part applies will be operated in compliance with this part. An assurance of compliance with this part shall not be satisfactory to the Director if the applicant or recipient to whom such assurance applies fails to commit itself to take whatever remedial action is necessary in accordance with § 86.3(a) to eliminate existing discrimination on the basis of sex or to eliminate the effects of past discrimination whether occurring prior or subsequent to the submission to the Director of such assurance.

(b) *Duration of obligation.* (1) In the case of Federal financial assistance extended to provide real property or structures thereon, such assurance shall obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used to provide an education program or activity.

(2) In the case of Federal financial assistance extended to provide personal property, such assurance shall obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases such assurance shall obligate the recipient for the period during which Federal financial assistance is extended.

(c) *Form.* The Director will specify the form of the assurances required by paragraph (a) of this section and the extent to which such assurances will be required of the applicant's or recipient's subgrantees, contractors, subcontractors, transferees, or successors in interest.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.5 Transfers of property.

If a recipient sells or otherwise transfers property financed in whole or in part with Federal financial assistance to a transferee which operates any education program or activity, and the Federal share of the fair market value of the property is not upon such sale or transfer properly accounted for to the Federal Government both the transferor and the transferee shall be deemed to be recipients, subject to the provisions of Subpart B of this part.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.6 Effect of other requirements.

(a) *Effect of other Federal provisions.* The obligations imposed by this part are independent of, and do not alter, obligations not to discriminate on the basis of sex imposed by Executive Order 11246, as amended; sections 799A and 845 of the Public Health Service Act (42 U.S.C. 295h–9 and 298b–2); Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); the Equal Pay Act (29 U.S.C. 206 and 206(d)); and any other Act of Congress or Federal regulation.

(Secs. 901, 902, 905, Education Amendments of 1972, 86 Stat. 373, 374, 375; 20 U.S.C. 1681, 1682, 1685)

(b) *Effect of State or local law or other requirements.* The obligation to comply with this part is not obviated or alleviated by any State or local law or other requirement which would render any applicant or student ineligible, or limit the eligibility of any applicant or student, on the basis of sex, to practice any occupation or profession.

(c) *Effect of rules or regulations of private organizations.* The obligation to comply with this part is not obviated or alleviated by any rule or regulation of any organization, club, athletic or other league, or association which would render any applicant or student ineligible to participate or limit the eligibility or participation of any applicant or student, on the basis of sex, in any education program or activity operated by a recipient and which receives or benefits from Federal financial assistance.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.7 Effect of employment opportunities.

The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for members of one sex than for members of the other sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.8 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* Each recipient shall designate at

least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to such recipient alleging its noncompliance with this part or alleging any actions which would be prohibited by this part. The recipient shall notify all its students and employees of the name, office address and telephone number of the employee or employees appointed pursuant to this paragraph.

(b) *Complaint procedure of recipient.* A recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by this part.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.9 Dissemination of policy.

(a) *Notification of policy.* (1) Each recipient shall implement specific and continuing steps to notify applicants for admission and employment, students and parents of elementary and secondary school students, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of sex in the educational programs or activities which it operates, and that is required by title IX and this part not to discriminate in such a manner. Such notification shall contain such information, and be made in such manner, as the Director finds necessary to apprise such persons of the protections against discrimination assured them by title IX and this part, but shall state at least that the requirement not to discriminate in education programs and activities extends to employment therein, and to admission thereto unless Subpart C does not apply to the recipient, and that inquiries concerning the application of title IX and this part to such recipient may be referred to the employee designated pursuant to § 86.8, or to the Director.

(2) Each recipient shall make the initial notification required by paragraph (a)(1) of this section within 90 days of the effective date of this part or of the date this part first applies to such recipient, whichever comes later, which notification shall include publication in: (i) Local newspapers; (ii) newspapers and magazines operated by such recipient or by student, alumnae, or alumni groups for or in connection with such recipient; and (iii) memoranda or other written communications distributed to every student and employee of such recipient.

(b) *Publications.* (1) Each recipient shall prominently include a statement of the policy described in paragraph (a) of this section in each announcement, bulletin, catalog, or application form which it makes available to any person of a type described in paragraph (a) of this section, or which is otherwise used in connection with the recruitment of students or employees.

(2) A recipient shall not use or distribute a publication of the type described in this paragraph which suggests, by text or illustration, that such recipient treats applicants, students, or employees differently on the basis of sex except as such treatment is permitted by this part.

(c) *Distribution.* Each recipient shall distribute without discrimination on the basis of sex each publication described in paragraph (b) of this section, and shall apprise each of its admission and employment recruitment representatives of the policy of nondiscrimination described in paragraph (a) of this section, and require such representatives to adhere to such policy.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

Subpart B—Coverage

§ 86.11 Application.

Except as provided in this subpart, this Part 86 applies to every recipient and to each education program or activity operated by such recipient which receives or benefits from Federal financial assistance.

§ 86.12 Educational institutions controlled by religious organizations.

(a) *Application.* This part does not apply to an educational institution which is controlled by a religious organization to the extent application of this part would not be consistent with the religious tenets of such organization.

(b) *Exemption.* An educational institution which wishes to claim the exemption set forth in paragraph (a) of this section, shall do so by submitting in writing to the Director a statement by the highest ranking official of the institution, identifying the provisions of this part which conflict with a specific tenet of the religious organization.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.13 Military and merchant marine educational institutions.

This part does not apply to an educational institution whose primary purpose is the training of individuals for a military service of the United States or for the merchant marine.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.14 Membership practices of certain organizations.

(a) *Social fraternities and sororities.* This part does not apply to the membership practices of social fraternities and sororities which are exempt from taxation under section 501(a) of the Internal Revenue Code of 1954, the active membership of which consists primarily of students in attendance at institutions of higher education.

(b) *YMCA, YWCA, Girl Scouts, Boy Scouts and Camp Fire Girls.* This part does not apply to the membership practices of the Young Men's Christian Association, the Young Women's Christian Association, the Girl Scouts, the Boy Scouts and Camp Fire Girls.

(c) *Voluntary youth service organizations.* This part does not apply to the membership practices of voluntary youth service organizations which are exempt from taxation under section 501(a) of the Internal Revenue Code of 1954 and the membership of which has been traditionally limited to members of one sex and principally to persons of less than nineteen years of age.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682; Sec. 3(a) of P.L. 93-568, 88 Stat. 1862 amending Sec. 901)

§ 86.15 Admissions.

(a) Admissions to educational institutions prior to June 24, 1973, are not covered by this part.

(b) *Administratively separate units.* For the purposes only of this section, §§ 86.16 and 86.17, and Subpart C, each administratively separate unit shall be deemed to be an educational institution.

(c) *Application of Subpart C.* Except as provided in paragraphs (d) and (e) of this section, Subpart C applies to each recipient. A recipient to which Subpart C applies shall not discriminate on the basis of sex in admission or recruitment in violation of that subpart.

(d) *Educational institutions.* Except as provided in paragraph (e) of this section as to recipients which are educational institutions, Subpart C applies only to institutions of vocational education, professional education, graduate higher education, and public institutions of undergraduate higher education.

(e) *Public institutions of undergraduate higher education.* Subpart C does not apply to any public institution of undergraduate higher education which traditionally and continually from its establishment has had a policy of admitting only students of one sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[40 FR 21428, June 4, 1975; 40 FR 39506, Aug. 28, 1975]

§ 86.16 Educational institutions eligible to submit transition plans.

(a) *Application.* This section applies to each educational institution to which Subpart C applies which:

(1) Admitted only students of one sex as regular students as of June 23, 1972; or

(2) Admitted only students of one sex as regular students as of June 23, 1965, but thereafter admitted as regular students, students of the sex not admitted prior to June 23, 1965.

(b) *Provision for transition plans.* An educational institution to which this section applies shall not discriminate on the basis of sex in admission or recruitment in violation of Subpart C unless it is carrying out a transition plan approved by the United States Commissioner of Education as described in § 86.17, which plan provides for the elimination of such discrimination by the earliest practicable date but in no event later than June 23, 1979.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.17 Transition plans.

(a) *Submission of plans.* An institution to which § 86.16 applies and which is composed of more than one administratively separate unit may submit either

a single transition plan applicable to all such units, or a separate transition plan applicable to each such unit.

(b) *Content of plans.* In order to be approved by the United States Commissioner of Education, a transition plan shall:

(1) State the name, address, and Federal Interagency Committee on Education (FICE) Code of the educational institution submitting such plan, the administratively separate units to which the plan is applicable, and the name, address, and telephone number of the person to whom questions concerning the plan may be addressed. The person who submits the plan shall be the chief administrator or president of the institution, or another individual legally authorized to bind the institution to all actions set forth in the plan.

(2) State whether the educational institution or administratively separate unit admits students of both sexes, as regular students and, if so, when it began to do so.

(3) Identify and describe with respect to the educational institution or administratively separate unit any obstacles to admitting students without discrimination on the basis of sex.

(4) Describe in detail the steps necessary to eliminate as soon as practicable each obstacle so identified and indicate the schedule for taking these steps and the individual directly responsible for their implementation.

(5) Include estimates of the number of students, by sex, expected to apply for, be admitted to, and enter each class during the period covered by the plan.

(c) *Nondiscrimination.* No policy or practice of a recipient to which § 86.16 applies shall result in treatment of applicants to or students of such recipient in violation of Subpart C unless such treatment is necessitated by an obstacle identified in paragraph (b)(3) of this section and a schedule for eliminating that obstacle has been provided as required by paragraph (b)(4) of this section.

(d) *Effects of past exclusion.* To overcome the effects of past exclusion of students on the basis of sex, each educational institution to which § 86.16 applies shall include in its transition plan, and shall implement, specific steps designed to encourage individuals of the previously excluded sex to apply for admission to such institution. Such steps shall include instituting recruitment programs which emphasize the institution's commitment to enrolling students of the sex previously excluded.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[40 FR 21428, June 4, 1975; 40 FR 39506, Aug. 28, 1975]

§ 86.18–86.20 [Reserved]

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

§ 86.21 Admission.

(a) *General.* No person shall, on the basis of sex, be denied admission, or be subjected to discrimination in admission, by any recipient to which this subpart applies, except as provided in §§ 86.16 and 86.17.

(b) *Specific prohibitions.* (1) In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which this Subpart applies shall not:

(i) Give preference to one person over another on the basis of sex, by ranking applicants separately on such basis, or otherwise;

(ii) Apply numerical limitations upon the number or proportion of persons of either sex who may be admitted; or

(iii) Otherwise treat one individual differently from another on the basis of sex.

(2) A recipient shall not administer or operate any test or other criterion for admission which has a disproportionately adverse effect on persons on the basis of sex unless the use of such test or criterion is shown to predict validly success in the education program or activity in question and alternative tests or criteria which do not have such a disproportionately adverse effect are shown to be unavailable.

(c) *Prohibitions relating to marital or parental status.* In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which this subpart applies:

(1) Shall not apply any rule concerning the actual or potential parental, family, or marital status of a student or applicant which treats persons differently on the basis of sex;

(2) Shall not discriminate against or exclude any person on the basis of pregnancy, childbirth, termination of pregnancy, or recovery therefrom, or establish or follow any rule or practice which so discriminates or excludes;

(3) Shall treat disabilities related to pregnancy, childbirth, termination of pregnancy, or recovery therefrom in the same manner and under the same policies as any other temporary disability or physical condition; and

(4) Shall not make pre-admission inquiry as to the marital status of an applicant for admission, including whether such applicant is "Miss" or "Mrs." A recipient may make pre-admission inquiry as to the sex of an applicant for admission, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by this part.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.22 Preference in admission.

A recipient to which this subpart applies shall not give preference to applicants for admission, on the basis of attendance at any educational institution or other school or entity which admits as students or predominantly members of one sex, if the giving of such preference has the effect of discriminating on the basis of sex in violation of this subpart.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.23 Recruitment.

(a) *Nondiscriminatory recruitment.* A recipient to which this subpart applies shall not discriminate on the basis of sex in the recruitment and admission of students. A recipient may be required to undertake additional recruitment efforts for one sex as remedial action pursuant to § 86.3(a), and may choose to undertake such efforts as affirmative action pursuant to § 86.3(b).

(b) *Recruitment at certain institutions.* A recipient to which this subpart applies shall not recruit primarily or exclusively at educational institutions, schools or entities which admit as students only or predominantly members of one sex, if such actions have the effect of discriminating on the basis of sex in violation of this subpart.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§§ 86.24–86.30 [Reserved]

Subpart D—Discrimination on the Basis of Sex in Education Programs and Activities Prohibited

§ 86.31 Education programs and activities.

(a) *General.* Except as provided elsewhere in this part, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives or benefits from Federal financial assistance. This subpart does not apply to actions of a recipient in connection with admission of its students to an education program or activity of (1) a recipient to which Subpart C does not apply, or (2) an entity, not a recipient, to which Subpart C would not apply if the entity were a recipient.

(b) *Specific prohibitions.* Except as provided in this subpart, in providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex:

(1) Treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service;

(2) Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;

(3) Deny any person any such aid, benefit, or service;

(4) Subject any person to separate or different rules of behavior, sanctions, or other treatment;

(5) Discriminate against any person in the application of any rules of appearance;

(6) Apply any rule concerning the domicile or residence of a student or applicant, including eligibility for in-state fees and tuition;

(7) Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit or service to students or employees;

(8) Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

(c) *Assistance administered by a recipient educational institution to study at a foreign institution.* A recipient edu-

cational institution may administer or assist in the administration of scholarships, fellowships, or other awards established by foreign or domestic wills, trusts, or similar legal instruments, or by acts of foreign governments and restricted to members of one sex, which are designed to provide opportunities to study abroad, and which are awarded to students who are already matriculating at or who are graduates of the recipient institution; *Provided*, a recipient educational institution which administers or assists in the administration of such scholarships, fellowship, or other awards which are restricted to members of one sex provides, or otherwise makes available reasonable opportunities for similar studies for members of the other sex. Such opportunities may be derived from either domestic or foreign sources.

(d) *Programs not operated by recipient.* (1) This paragraph applies to any recipient which requires participation by any applicant, student, or employee in any education program or activity not operated wholly by such recipient, or which facilitates, permits, or considers such participation as part of or equivalent to an education program or activity operated by such recipient, including participation in educational consortia and cooperative employment and student-teaching assignments.

(2) Such recipient:

(i) Shall develop and implement a procedure designed to assure itself that the operator or sponsor of such other education program or activity takes no action affecting any applicant, student, or employee of such recipient which this part would prohibit such recipient from taking; and

(ii) Shall not facilitate, require, permit, or consider such participation if such action occurs.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.32 Housing.

(a) *Generally.* A recipient shall not, on the basis of sex, apply different rules or regulations, impose different fees or requirements, or offer different services or benefits related to housing, except as provided in this section (including housing provided only to married students).

(b) *Housing provided by recipient.* (1) A recipient may provide separate housing on the basis of sex.

(2) Housing provided by a recipient to students of one sex, when compared to that provided to students of the other sex, shall be as a whole:

(i) Proportionate in quantity to the number of students of that sex applying for such housing; and

(ii) Comparable in quality and cost to the student.

(c) *Other housing.* (1) A recipient shall not, on the basis of sex, administer different policies or practices concerning occupancy by its students of housing other than provided by such recipient.

(2) A recipient which, through solicitation, listing, approval of housing, or otherwise, assists any agency, organization, or person in making housing available to any of its students, shall take such reasonable action as may be necessary to assure itself that such housing as is provided to students of one sex, when compared to that provided to students of the other sex, is as a whole: (i) Proportionate in quantity and (ii) comparable in quality and cost to the student. A recipient may render such assistance to any agency, organization, or person which provides all or part of such housing to students only of one sex.

(Secs. 901, 902, 907, Education Amendments of 1972, 86 Stat. 373, 374, 375; 20 U.S.C. 1681, 1682, 1686)

§ 86.33 Comparable facilities.

A recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374)

§ 86.34 Access to course offerings.

A recipient shall not provide any course or otherwise carry out any of its education program or activity separately on the basis of sex, or require or refuse participation therein by any of its students on such basis, including health, physical education, industrial, business, vocational, technical, home economics, music, and adult education courses.

(a) With respect to classes and activities in physical education at the elementary school level, the recipient shall comply fully with this section as expeditiously as possible but in no event later than one year from the effective date of this regulation. With respect to physical education classes and activities at the secondary and post-secondary levels, the recipient shall comply fully with this section as expeditiously as possible but in no event later than three years from the effective date of this regulation

(b) This section does not prohibit grouping of students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex.

(c) This section does not prohibit separation of students by sex within physical education classes or activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball and other sports the purpose or major activity of which involves bodily contact.

(d) Where use of a single standard of measuring skill or progress in a physical education class has an adverse effect on members of one sex, the recipient shall use appropriate standards which do not have such effect.

(e) Portions of classes in elementary and secondary schools which deal exclusively with human sexuality may be conducted in separate sessions for boys and girls.

(f) Recipients may make requirements based on vocal range or quality which may result in a chorus or choruses of one or predominantly one sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.35 Access to schools operated by L.E.A.s.

A recipient which is a local educational agency shall not, on the basis of sex, exclude any person from admission to:

(a) Any institution of vocational education operated by such recipient; or

(b) Any other school or educational unit operated by such recipient, unless such recipient otherwise makes available to such person, pursuant to the same policies and criteria of admission, courses, services, and facilities comparable to each course, service, and facility offered in or through such schools.

(Sections 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.36 Counseling and use of appraisal and counseling materials.

(a) *Counseling.* A recipient shall not discriminate against any person on the basis of sex in the counseling or guidance of students or applicants for admission.

(b) *Use of appraisal and counseling materials.* A recipient which uses testing or other materials for appraising or counseling students shall not use different materials for students on the basis of their sex or use materials which permit or require different treatment of students on such basis unless such different materials cover the same occupations and interest areas and the use of such different materials is shown to be essential to eliminate sex bias. Recipients shall develop and use internal procedures for ensuring that such materials do not discriminate on the basis of sex. Where the use of a counseling test or other instrument results in a substantially disproportionate number of members of one sex in any particular course of study or classification, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination in the instrument or its application.

(c) *Disproportion in classes.* Where a recipient finds that a particular class contains a substantially disproportionate number of individuals of one sex, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination on the basis of sex in counseling or appraisal materials or by counselors.

§ 86.37 Financial assistance.

(a) *General.* Except as provided in paragraphs (b) and (c) of this section, in providing financial assistance to any of its students, a recipient shall not: (1) On the basis of sex, provide different amount or types of such assistance, limit eligibility for such assistance which is of any particular type or source, apply different criteria, or otherwise discriminate; (2) through solicitation, listing, approval, provision of facilities or other services, assist any foundation, trust, agency, organization, or person which provides assistance to any of such recipient's students in a manner which discriminates on the basis of sex; or (3) apply any rule or assist in application of any rule concerning eligibility for such

assistance which treats persons of one sex differently from persons of the other sex with regard to marital or parental status.

(b) *Financial aid established by certain legal instruments.* (1) a recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established pursuant to domestic or foreign wills, trusts, bequests, or similar legal instruments or by acts of a foreign government which requires that awards be made to members of a particular sex specified therein; *Provided*, that the overall effect of the award of such sex-restricted scholarships, fellowships, and other forms of financial assistance does not discriminate on the basis of sex.

(2) To ensure nondiscriminatory awards of assistance as required in subparagraph (b)(1) of this section, recipients shall develop and use procedures under which:

(i) Students are selected for award of financial assistance on the basis of nondiscriminatory criteria and not on the basis of availability of funds restricted to members of a particular sex;

(ii) An appropriate sex-restricted scholarship, fellowship, or other form of financial assistance is allocated to each student selected under subparagraph (b)(2)(i) of this paragraph, and

(iii) No student is denied the award for which he or she was selected under paragraph (b)(2)(i) of this section because of the absence of a scholarship, fellowship, or other form of financial assistance designated for a member of that student's sex.

(c) *Athletic scholarships.* (1) To the extent that a recipient awards athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics.

(2) Separate athletic scholarships or grants-in-aid for members of each sex may be provided as part of separate athletic teams for members of each sex to the extent consistent with this paragraph and § 86.41.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682; and Sec. 844, Education Amendments of 1974, Pub. L. 93-380, 88 Stat. 484)

[40 FR 21428, June 4, 1975; 40 FR 39506, Aug. 28, 1975]

§ 86.38 Employment assistance to students.

(a) *Assistance by recipient in making available outside employment.* A recipient which assists any agency, organization or person in making employment available to any of its students:

(1) Shall assure itself that such employment is made available without discrimination on the basis of sex; and

(2) Shall not render such services to any agency, organization, or person which discriminates on the basis of sex in its employment practices.

(b) *Employment of students by recipients.* A recipient which employs any of its students shall not do so in a manner which violates Subpart E of this part.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.39 Health and insurance benefits and services.

In providing a medical, hospital, accident, or life insurance benefit, service, policy, or plan to any of its students, a recipient shall not discriminate on the basis of sex, or provide such benefit, service, policy, or plan in a manner which would violate Subpart E of this part if it were provided to employees of the recipient. This section shall not prohibit a recipient from providing any benefit or service which may be used by a different proportion of students of one sex than of the other, including family planning services. However, any recipient which provides full coverage health service shall provide gynecological care.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.40 Marital or parental status.

(a) *Status generally.* A recipient shall not apply any rule concerning a student's actual or potential parental, family, or marital status which treats students differently on the basis of sex.

(b) *Pregnancy and related conditions.* (1) A recipient shall not discriminate against any student, or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient.

(2) A recipient may require such a student to obtain the certification of a physician that the student is physically and emotionally able to continue participation in the normal education program or activity so long as such a certification is required of all students for other physical or emotional conditions requiring the attention of a physician.

(3) A recipient which operates a portion of its education program or activity separately for pregnant students, admittance to which is completely voluntary on the part of the student as provided in paragraph (b)(1) of this section shall ensure that the instructional program in the separate program is comparable to that offered to non-pregnant students.

(4) A recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom in the same manner and under the same policies as any other temporary disability with respect to any medical or hospital benefit, service, plan or policy which such recipient administers, operates, offers, or participates in with respect to students admitted to the recipient's educational program or activity.

(5) In the case of a recipient which does not maintain a leave policy for its students, or in the case of a student who does not otherwise qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as a justification for a leave of absence for so long a period of time as is deemed medically necessary by the student's physician, at the conclusion of which the student shall be reinstated to the status which she held when the leave began.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.41 Athletics.

(a) *General.* No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis.

(b) *Separate teams.* Notwithstanding the requirements of paragraph (a) of this section, a recipient may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport. However, where a recipient operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no such team for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try-out for the team offered unless the sport involved is a contact sport. For the purposes of this part, contact sports include boxing, wrestling, rugby, ice hockey, football, basketball and other sports the purpose of major activity of which involves bodily contact.

(c) *Equal opportunity.* A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics shall provide equal athletic opportunity for members of both sexes. In determining whether equal opportunities are available the Director will consider, among other factors:

(1) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;

(2) The provision of equipment and supplies;

(3) Scheduling of games and practice time;

(4) Travel and per diem allowance;

(5) Opportunity to receive coaching and academic tutoring;

(6) Assignment and compensation of coaches and tutors;

(7) Provision of locker rooms, practice and competitive facilities;

(8) Provision of medical and training facilities and services;

(9) Provision of housing and dining facilities and services;

(10) Publicity.

Unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams if a recipient operates or sponsors separate teams will not constitute noncompliance with this section, but the Director may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex.

(d) *Adjustment period.* A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics at the elementary school level shall comply fully with this section as

expeditiously as possible but in no event later than one year from the effective date of this regulation. A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics at the secondary or post-secondary school level shall comply fully with this section as expeditiously as possible but in no event later than three years from the effective date of this regulation.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682; and Sec. 844, Education Amendments of 1974, Pub. L. 93-380, 88 Stat. 484)

[40 FR 21428, June 4, 1975; 40 FR 39506, Aug. 28, 1975]

§ 86.42 Textbooks and curricular material.

Nothing in this regulation shall be interpreted as requiring or prohibiting or abridging in any way the use of particular textbooks or curricular materials.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.43–86.50 [Reserved]

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited

§ 86.51 Employment.

(a) *General.* (1) No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in employment, or recruitment, consideration, or selection therefor, whether full-time or part-time, under any education program or activity operated by a recipient which receives or benefits from Federal financial assistance.

(2) A recipient shall make all employment decisions in any education program or activity operated by such recipient in a nondiscriminatory manner and shall not limit, segregate, or classify applicants or employees in any way which could adversely affect any applicant's or employee's employment opportunities or status because of sex.

(3) A recipient shall not enter into any contractual or other relationship which directly or indirectly has the effect of subjecting employees or students to discrimination prohibited by this Subpart, including relationships with employment and referral agencies, with labor unions, and with organizations providing or administering fringe benefits to employees of the recipient.

(4) A recipient shall not grant preferences to applicants for employment on the basis of attendance at any educational institution or entity which admits as students only or predominantly members of one sex, if the giving of such preferences has the effect of discriminating on the basis of sex in violation of this part.

(b) *Application.* The provisions of this subpart apply to:

(1) Recruitment, advertising, and the process of application for employment;

(2) Hiring, upgrading, promotion, consideration for and award of tenure, demotion, transfer, layoff, termination, application of nepotism policies, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation, and changes in compensation;

(4) Job assignments, classifications and structure, including position descriptions, lines of progression, and seniority lists;

(5) The terms of any collective bargaining agreement;

(6) Granting and return from leaves of absence, leave for pregnancy, childbirth, false pregnancy, termination of pregnancy, leave for persons of either sex to care for children or dependents, or any other leave;

(7) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(8) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, selection for tuition assistance, selection for sabbaticals and leaves of absence to pursue training;

(9) Employer-sponsored activities, including social or recreational programs; and

(10) Any other term, condition, or privilege of employment.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.52 Employment criteria.

A recipient shall not administer or operate any test or other criterion for any employment opportunity which has a disproportionately adverse effect on persons on the basis of sex unless:

(a) Use of such test or other criterion is shown to predict validly successful performance in the position in question; and

(b) Alternative tests or criteria for such purpose, which do not have such disproportionately adverse effect, are shown to be unavailable.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.53 Recruitment.

(a) *Nondiscriminatory recruitment and hiring.* A recipient shall not discriminate on the basis of sex in the recruitment and hiring of employees. Where a recipient has been found to be presently discriminating on the basis of sex in the recruitment or hiring of employees, or has been found to have in the past so discriminated, the recipient shall recruit members of the sex so discriminated against so as to overcome the effects of such past or present discrimination.

(b) *Recruitment patterns.* A recipient shall not recruit primarily or exclusively at entities which furnish as applicants only or predominantly members of one sex if such actions have the effect of discriminating on the basis of sex in violation of this subpart.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.54 Compensation.

A recipient shall not make or enforce any policy or practice which, on the basis of sex:

(a) Makes distinctions in rates of pay or other compensation;

(b) Results in the payment of wages to employees of one sex at a rate less than that paid to employees of the opposite sex for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.55 Job classification and structure.

A recipient shall not:

(a) Classify a job as being for males or for females;

(b) Maintain or establish separate lines of progression, seniority lists, career ladders, or tenure systems based on sex; or

(c) Maintain or establish separate lines of progression, seniority systems, career ladders, or tenure systems for similar jobs, position descriptions, or job requirements which classify persons on the basis of sex, unless sex is a bona-fide occupational qualification for the positions in question as set forth in § 86.61.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[40 FR 21428, June 4, 1975; 40 FR 39506, Aug. 28, 1975]

§ 86.56 Fringe benefits.

(a) *"Fringe benefits" defined.* For purposes of this part, "fringe benefits" means: Any medical, hospital, accident, life insurance or retirement benefit, service, policy or plan, any profit-sharing or bonus plan, leave, and any other benefit or service of employment not subject to the provision of § 86.54.

(b) *Prohibitions.* A recipient shall not:

(1) Discriminate on the basis of sex with regard to making fringe benefits available to employees or make fringe benefits available to spouses, families, or dependents of employees differently upon the basis of the employee's sex;

(2) Administer, operate, offer, or participate in a fringe benefit plan which does not provide either for equal periodic benefits for members of each sex, or for equal contributions to the plan by such recipient for members of each sex; or

(3) Administer, operate, offer, or participate in a pension or retirement plan which establishes different optional or compulsory retirement ages based on sex or which otherwise discriminates in benefits on the basis of sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.57 Marital or parental status.

(a) *General.* A recipient shall not apply any policy or take any employment action:

(1) Concerning the potential marital, parental, or family status of an employee or applicant for employment which treats persons differently on the basis of sex; or

(2) Which is based upon whether an employee or applicant for employment is the head of household or principal wage earner in such employee's or applicant's family unit.

(b) *Pregnancy.* A recipient shall not discriminate against or exclude from employment any employee or applicant for employment on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom.

(c) *Pregnancy as a temporary disability.* A recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom and any temporary disability resulting therefrom as any other temporary dis-

ability for all job related purposes, including commencement, duration and ex-

(b) *Benefits.* A recipient which provides any compensation, service, or bene-

§ 86.61 Sex as a bona-fide occupational qualification.

ability for all job related purposes, including commencement, duration and extensions of leave, payment of disability income, accrual of seniority and any other benefit or service, and reinstatement, and under any fringe benefit offered to employees by virtue of employment.

(d) *Pregnancy leave.* In the case of a recipient which does not maintain a leave policy for its employees, or in the case of an employee with insufficient leave or accrued employment time to qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as a justification for a leave of absence without pay for a reasonable period of time, at the conclusion of which the employee shall be reinstated to the status which she held when the leave began or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities, or any other right or privilege of employment.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.58 Effect of State or local law or other requirements.

(a) *Prohibitory requirements.* The obligation to comply with this subpart is not obviated or alleviated by the existence of any State or local law or other requirement which imposes prohibitions or limits upon employment of members of one sex which are not imposed upon members of the other sex.

(b) *Benefits.* A recipient which provides any compensation, service, or benefit to members of one sex pursuant to a State or local law or other requirement shall provide the same compensation, service, or benefit to members of the other sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.59 Advertising.

A recipient shall not in any advertising related to employment indicate preference, limitation, specification, or discrimination based on sex unless sex is a *bona-fide* occupational qualification for the particular job in question.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.60 Pre-employment inquiries.

(a) *Marital status.* A recipient shall not make pre-employment inquiry as to the marital status of an applicant for employment, including whether such applicant is "Miss or Mrs."

(b) *Sex.* A recipient may make pre-employment inquiry as to the sex of an applicant for employment, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by this part.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.61 Sex as a bona-fide occupational qualification.

A recipient may take action otherwise prohibited by this subpart provided it is shown that sex is a bona-fide occupational qualification for that action, such that consideration of sex with regard to such action is essential to successful operation of the employment function concerned. A recipient shall not take action pursuant to this section which is based upon alleged comparative employment characteristics or stereotyped characterizations of one or the other sex, or upon preference based on sex of the recipient, employees, students, or other persons, but nothing contained in this section shall prevent a recipient from considering an employee's sex in relation to employment in a locker room or toilet facility used only by members of one sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§§ 86.62–86.70 [Reserved]

Subpart F—Procedures [Interim]

§ 86.71 Interim procedures.

For the purposes of implementing this part during the period between its effective date and the final issuance by the Department of a consolidated procedural regulation applicable to title IX and other civil rights authorities administered by the Department, the procedural provisions applicable to title VI of the Civil Rights Act of 1964 are hereby adopted and incorporated herein by reference. These procedures may be found at 45 CFR 80–6—80–11 and 45 CFR Part 81.

Vocational Amendments of 1976 (P.L. 94-482)

Nondiscrimination in Vocational Education Programs #104.515 (d) (4), 104.592, 104.75 (e) (i)

Vocational education programs such as apprenticeship, industrial arts, cooperative vocational education, work-study programs, and vocational education student organizations, which are funded by the State's basic grant, are subject to the provisions of both Title IX (prohibiting sex discrimination) and the new Vocational Education Act (eliminating sex stereotyping).

NATIONAL PROGRAMS #105.101 - 105.627

National Administration

The Act and the regulation are administered by the Bureau of Occupational and Adult Education, Office of Education, HEW. The Presidentially-appointed National Advisory Council on Vocational Education advises the Federal government concerning the administration of the vocational education programs under the Act. For the first time, women and minority women who are knowledgeable about sex discrimination in employment and training must be appointed to that Council. (Sections 160(a), 162(a)(6), (b) of the Act.)

Grants and Contracts to Eliminate Sex Bias #105.104

The Commissioner of Education is authorized to use some funds for contracts and grants for research and development of nationally significant model programs. These awards may be used to assist in overcoming sex bias and sex stereotyping in curriculum, guidance and counseling and staff and teacher attitudes and behavior. In the review of applications under this section, points will be awarded for the use of female professional staff and for plans to eliminate sex bias and sex stereotyping in the proposed projects (#105.110(h)(4), (k)).

Vocational Information Data System #104.116

The Commissioner of Education, in conjunction with the Administrator of the National Center for Education Statistics, must develop a uniform system for collecting and reporting national vocational education data including school enrollments by race and sex. The regulation does not require crosstabulation by race-by sex.

Fellowships for Vocational Education Leadership #105.301 - 105.443

The Commissioner of Education will award fellowships for fulltime study in vocational education. Points will be awarded to applicants whose goals are to eliminate sex bias in vocational education and to applicants preparing themselves to teach vocational education courses which are non-traditional for their sex. Equitable distribution of males and females will be considered in the awarding of fellowships.

STATE PROGRAMS #104.1 - 104.96

State Advisory Councils #104.91 - 104.97

Each State seeking Federal funds under the Act must designate a State board, usually the State board of education, to be responsible for the administration of vocational education programs (#104.31). The governor or the State board of education must appoint an advisory council whose major responsibilities are to assist the State board in the planning process and to conduct evaluations of vocational education programs, including programs to overcome sex bias.

The membership of the council must include individuals representing a wide variety of interests and the general public. The council must appropriately represent both sexes, racial and ethnic minorities and the regions of the State. *Appropriate representation* means that the composition of the council must reflect the percentage of minorities and women either in the population or in the work force of the State. The majority of the council should be from fields other than education. No member of the council may officially represent more than one required category.

Women (including minority women) must be appointed to the State advisory council. They must have experience in employment and training programs and be knowledgeable about the problems of sex discrimination in training and employment. Minority women appointed should have the same qualifications with regard to the problems faced by minority women.

Local Advisory Councils #104.111 - 104.112

Each local education agency or institution assisted under the Act must establish an advisory council on vocational education to be composed of representatives of specific interests and the general public. The council must appropriately represent both sexes and racial and ethnic minorities served by the local education agency or institution.

Vocational Education Sex Equity Coordinator #104.71 - 104.76

Each State receiving funds under the Act must spend at least $50,000 of its Federal grant each fiscal year for full-time personnel to assist the State board in providing equal opportunity in vocational education to both sexes and in eliminating sex bias, sex discrimination and sex stereotyping from all vocational education programs. The State should match the qualifications of applicants with the responsibilities of the job and is encouraged to hire personnel with a commitment to the elimination of sex bias in vocational education and a knowledge of the barriers to equal access for both sexes.

The duties of the Vocational Education Sex Equity Coordinator include the following:

- reviewing the State five-year and annual plans and making recommendations concerning the programs to eliminate sex bias;
- publicizing programs and activities designed to reduce sex discrimination in vocational education;
- collecting and analyzing data on the status of female students and employees;
- monitoring grant distribution to insure that the needs and interests of women are addressed by projects assisted under the Act;
- monitoring all vocational education programs in the State for sex bias;
- reviewing Title IX self-evaluations;
- developing remedies and recommendations to overcome sex bias;
- assisting local education agencies in their efforts to improve opportunities for women in vocational education.

State Planning Process #104.161 - 104.405

States seeking funds under the Act must submit five-year plans, annual program plans and accountability reports to the Commissioner of Education. The five-year plans must explain how Federal funds received will be allocated and describe the vocational education pro-

grams to be supported. The annual program plans and the accountability reports must account for the expenditure of funds and provide yearly reviews of progress toward goals.

Policies for Eradicating Sex Discrimination
#104.187

The five-year plan must include a detailed description of the State's plan to insure equal access for both sexes to vocational education programs. The plan must describe

- actions to overcome sex discrimination and sex stereotyping in all State and local vocational education programs;
- incentives to encourage the enrollment of both sexes in non-traditional courses of study;
- incentives to encourage the development of model programs to reduce sex bias and sex stereotyping in job training and placement for all occupations;
- programs to assess and meet the needs of displaced homemakers and other special groups (#104.621).

The annual plans and the accountability reports must describe the results of the State's program to eliminate sex discrimination and to assure equal access for both sexes to vocational education (104.222(f)(2), 104.241(b)(1), 104.402).

Public Participation in the Planning Process
#104.162 - 104.267

The State board is required to conduct a series of public hearings throughout the State on the five-year plans, annual plans and accountability reports. The hearings should provide an opportunity for all interested segments of the population to comment on goals, programs and allocation of resources for vocational education. The five-year plan must include the views expressed by the public, the state's responses to those views and an explanation for views not accepted for inclusion in the plan.

Displaced Homemakers and other Special Groups
#104.621 - 104.622

States must use some funds to provide vocational education programs for displaced homemakers, single heads of households, homemakers seeking employment, part-time workers seeking full-time jobs and persons seeking non-traditional jobs. The programs must include organized education and training to prepare these individuals for employment, courses in job search techniques and placement services upon completion of the vocational education programs. Although these programs are mandatory, the level of funding is left to the discretion of the State.

Support Services for Women
#104.601 - 104.603

States may use funds for support services for women who enter vocational education programs designed to prepare them for non-traditional jobs. Support services include:

- counseling women on the nature of non-traditional training and employment and on ways of overcoming the difficulties and barriers they may encounter;
- informing women about the options, opportunities and range of jobs available;
- assisting women in finding employment relevant to their training and interests;
- increasing the number of female instructors of non-traditional courses in order to provide role models for female students.

Day Care Services
#104.611

States may use funds to provide day care services to children of male and female students (including single parents) enrolled in secondary and post-secondary vocational education programs.

Vocational Guidance and Counseling
#104.761 - 104.776

The Act designates some funds to support vocational guidance and counseling. States may spend all or part of these funds to overcome sex bias and sex stereotyping through in-service training of vocational guidance counselors and teachers. Such training should acquaint vocational educators with:

- the changing work patterns of women;
- ways of overcoming occupational sex stereotyping;
- ways of helping girls and women select careers on the basis of their needs and interests.

Grants to Overcome Sex Bias
#104.791 - 104.793

States may award grants for projects designed to overcome sex bias and sex stereotyping in vocational education programs and curriculum materials and for programs to acquaint teachers, administrators and counselors with effective means of overcoming sex bias (also see #104.701(d), 104.705(c)).

States may award contracts for "exemplary and innovative projects." Such projects must give priority to reducing sex bias and sex stereotyping in vocational education (#104.706).

Consumer and Homemaker Education
#104.904

The Act designates some funds to support programs in consumer and homemaking education. These programs must:

- encourage both males and females to prepare for combining the roles of homemaker and wage earner;
- promote the development of curriculum materials which deal with the changing roles of women and men in the work world and the home.

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The compiler gives credit to the following publications/organizations for their contributions:

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